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THE  
PLEADER'S GUIDE,  
A DIDACTIC POEM.

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THE  
PLEADER'S GUIDE,  
A DIDACTIC POEM,  
IN TWO PARTS.  
*Smith*  
CONTAINING  
THE CONDUCT OF A SUIT AT LAW,  
WITH THE ARGUMENTS OF  
COUNSELLOR BOTHER'UM  
AND  
COUNSELLOR BORE'UM,  
IN AN ACTION BETWIXT  
JOHN-A-GULL AND JOHN-A-GUDGEON,  
FOR ASSAULT AND BATTERY,  
AT A LATE CONTESTED ELECTION.

51880  
1901

By the late J. S. Esquire,  
SPECIAL PLEADER, AND BARRISTER AT LAW.

[By John Anstey]  
THE FIFTH EDITION.

LONDON:

PRINTED FOR T. CADELL AND W. DAVIES, STRAND.  
1808.

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## TO THE READER.

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THE following production of the late ingenious MR. SURREBUTTER, Special Pleader and Barrister at Law, is submitted to your perusal by his Executor, in the precise form in which it was found among the Author's Papers at his decease. The Poem is divided into two Parts, and the whole subdivided into eighteen Lectures, being the substance of a Course of Instruction in the Practice of the Courts and the art of Special Pleading, originally intended by the Author for the use of his pupil and kinsman, Mr. JOB SURREBUTTER, to whom it is particularly addressed. The

Author, in the outset of his plan, professes to demonstrate to his pupil the decided superiority of the Common Law over the Civil, with respect to some *peculiar* advantages, heretofore perhaps not fully considered ; and from thence proceeds to instruct him in the History of a Suit at Common Law, commencing with the *Original Writ*, and conducting him regularly through the whole of the subsequent Process in all its splendid varieties and modifications ; and finishing the first Course of his Lectures with the Parties' final appearance in Court, upon the return of the *Process to Outlawry*.

The subsequent Lectures, which compose the Second Part, resume the subject at the point where it rested,

preserving the *Epic* and *Didactic* character of the work through the remaining stages of the PLEADINGS and the TRIAL.

The Editor has only further to remark, that he has subjoined to the text an explanation of the technical terms and legal references as they occur in the course of the Poem; and has also, for the satisfaction of the *candid* Reader, been at very considerable pains to discover, if possible, whom the Author really intended under the different characters he has interwoven with the History of the *Process* and the *Trial*; in this, however, the Editor acknowledges with concern that he has completely failed; partly owing to a defect in the Author's original MSS, and the

total absence of dates, and partly to the *changing of the Venue* in the Trial, and the circumstance of the Cause not having been tried at the Assizes for the county wherein the trespass is supposed to have been committed—it is, perhaps, a fault in the original design of this Poem, that it should have been *unfortunately* so constructed, that the characters attempted to be delineated in it, will *not* admit of any particular application; but, as it is a *posthumous* production, due allowances, it is to be hoped, will be made for this imperfection.

J. A.

SYLLABUS  
OF  
MR. SURREBUTTER'S  
PROFESSIONAL LECTURES.

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LECTURE I.

MR. S. proposes the Plan of his Lectures—  
His Address to the Gentlemen of the Law, particularly to his kinsman Mr. JOB S-RR-B-TT-R  
—The Plan of Mr. JOB's Education for the study of the Law commended—The superior advantages of his situation as a Special Pleader's Pupil.

## LECTURE II.

Of the KING, and his Prerogative—Of the CIVIL and MUNICIPAL administration of public Justice, allegorically delineated and compared.

## LECTURE III.

Comparison continued—Of the CIVIL LAW Process—Excommunication—Serious address to the Civilians, with certain weighty Interrogatories—Mr. S-RR-B-TT-R's personal superiority as a Common Lawyer—Counsellor BOTHER'UM and Counsellor BORE'UM proposed to Mr. JOB S-RR-B-TT-R as models for his imitation.

## LECTURE IV.

Of the Common Law process—Inyocation to an Infernal Spirit—Of the ORIGINAL, or *Original*

*Writ*, and Process thereon—The High Sheriff—  
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## LECTURE V.

Process continued—Of the Writs *LA TITAT*—*CA-  
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Of *Special Bail*, or *Bail to the Action*.

## LECTURE VI.

Of Process against Privileged Persons—Of the  
*DISTRINGAS*—Its Physical and Chirurgical  
Qualities—Process to *Outlawry*, and the Party's  
Appearance upon the *CAPIAS UTLAGATUM*.

## LECTURE VII.

An Episode, containing authentic Memoirs of Mr.  
*S-B-T-T-R*'s Professional Career.

## LECTURE VIII.

Memoirs continued—Mr. S-RR-B-TT-R is called to the Bar—Goes the Circuit—The Character of Mr. JOSEPH FERRET, a Country Attorney—Subject resumed—Instructions to Mr. JOB S-RR-B-TT-R in the Art of SPECIAL PLEADING—MESSRS. JOHN DOE and RICHARD ROE—Conclusion of the First Part.



## PART II.

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### LECTURE I.

MR. S. having finished the PROCESS of a SUIT AT LAW, opens the present Discourse with the PLEADINGS, containing a Poetical Explanation of the Composition and Structure of the RECORD, from the PROCESS to the POSTEA; illustrated with Professional Traits of the Character of the late THOMAS TEWKESBURY, Esq. *Special Pleader*, with some Account of his Death.

### LECTURE II.

On the Absurdity of legal *Innovations*—Of References and Arbitrations—A JUSTICE OF PEACE—His Judicial consequence in the eye of the Law

—the great Advantages resulting from the multiplication of Law Offices, and the Perplexity of legal Proceedings.

### LECTURE III.

On *Misprisions* in Practice, contrasted with the Professional Exploits, and exemplary Conduct of MESSRS. HAWK, SHARK, and other distinguished Characters.

### LECTURE IV.

A short Digression, containing a distant prospect—Mr. S. resumes the Plan of his Lectures—His Instructions for forming the complete Orator at the Bar—Making a Motion in Court—Addressing a Jury, &c.

### LECTURE V.

Of *Dress*, and *Action* in Speaking—Of *Ore Tenus* Examination, and the best and most approved Method of Extracting Truth from Evidence.

## LECTURE VI.

Instructions continued and illustrated by the Examples of Mr. Counsellor BOTHER'UM, and Mr. Counsellor BORE'UM, introductory to the Trial of Trespass in *Assault and Battery* at a late contested Election.

## LECTURE VII.

THE TRIAL, as taken by an eminent Short-hand Writer.

JOHN-A-GULL

at st.

JOHN-A-GUDGEON

} In Trespass.

For the Plaintiff, Mr. Counsellor BOTHER'UM ;  
 For the Defendant, Mr. Counsellor BORE'UM—  
 Mr. BOTHER'UM opens the Pleadings—His  
 Speech at length.

## LECTURE VIII.

Examination of Witnesses for the Plaintiff—Mr.  
 SIMON TROUT, Dissenting Preacher and School-

master, examined by Mr. BOTHER'UM—Cross-examined by Mr. BORE'UM—Evidence of Dr. TENCH, Surgeon and Apothecary.

### LECTURE IX.

Trial continued—Examination of Farmer CHUBB by Mr. BOTHER'UM—Cross-examined by Mr. BORE'UM—Conclusion of the *Evidence for the Plaintiff*.

### LECTURE X.

The Defendant's Case—Mr. BORE'UM's Speech—Interrupted by Mr. BOTHER'UM—His Law Argument—Cites Cases—Answered by Mr. BORE'UM—Conclusion of Mr. BORE'UM's Speech, and of the Arguments on both Sides—End of the Tenth Lecture of the Second Part, and the last of the PLEADER'S GUIDE.

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THE  
PLEADER'S GUIDE.

PART I.

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THE  
PLEADER'S GUIDE.

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PART I.

LECTURE I.

MR. S \* \* E \* \* R *proposes the Plan of his Lectures: his address to the Gentlemen of the Law, particularly to his kinsman, Mr. JOB S \* \* E \* \* R—The Plan of MR. JOB'S education for the study of the Law commended—The superior advantages of his situation as a Special Pleader's Pupil.*

OF legal Fictions, Quirks, and Glosses,  
Attorney's gains, and Client's losses,  
Of Suits created, lost, and won,  
How to undo, and be undone ;  
Whether by COMMON LAW, or CIVIL,  
A man goes sooner to the Devil,

Things which few mortals can disclose  
 In Verse, or comprehend in Prose,  
 I sing—do thou, bright Phœbus, deign  
 To shine for once in Chanc'ry-lane;  
 And, CLIO, if your pipe you'll lend  
 To MERCURY, the Lawyer's friend,  
 That <sup>a</sup> Usher of the golden rod,  
 Of Gain and Eloquence the God,  
 Shall lead my steps with guidance sure,  
 Safe through the <sup>b</sup> palpable obscure,  
 And take my parchments for his labour  
 To cover your harmonious tabour.

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<sup>a</sup> ——— Virgâque levem coerces  
 Aureâ turbam                      HOR. Ode.

<sup>b</sup> And through the palpable obscure find out  
 His uncouth way.                      MILTON, b. ii. v. 405.



“PINDUS to wit,”—or where you chuse,—  
At Lincoln’s Inn, or Arethuse,  
For Bards and Lawyers, both with ease,  
May place the *Venue* where they please;  
\* No matter where an Action’s laid,  
A Contract or a Poem made :  
Is there a proud o’erbearing wight  
Who tramples on his neighbour’s right,

---

<sup>1</sup> *Venue* or *visne*, in Latin, *vicinetum*, is the neighbourhood in which the Declaration states the Cause of Action to have arisen, and is prefixed to the margin of every Declaration with a *Scilicet*, as “Pindus to wit,” above.

<sup>2</sup> *No matter where*—This must be understood of personal or transitory actions which relate to Goods and Chattels, as contradistinguished from local, which relate to Lands and Tenements: of the former class are all Actions of Covenant, Contract, Annuity, or

Superior in his own opinion  
 To Lawyers, and the Law's dominion?  
 Say, what compulsive mode of action  
 Must give the injur'd, satisfaction;  
 What forms, what fictions must combine  
 To make the parties <sup>3</sup>*Issue join*;  
 And better may enable those  
 Who draw their Pleas, or Briefs compose,

---

Debt at large. For *debitum et contractus sunt nullius loci* 7 Co. 3. a. 2 In. 229. 23.

<sup>3</sup> *Issue join*—Issue, from the French, *issuer*, i. e. *emanare*, to flow from. The word *issue* has various significations in Law; it occurs here in its most general and received sense: “a single certain and material point issuing out of the Allegations and Pleas of the Plaintiff and Defendant, consisting regularly upon an Affirmative and Negative in a Cause to be tried by a Jury of twelve men.” 2 *Inst.* 126.

To hold the balance of success  
With such precision and address,  
That both the combat may sustain,  
And neither the advantage gain;  
But when 'tis o'er and judgment given  
The scales may prove so just and even,  
That each may venture to make oath  
The Law's impartial to them both;  
When both in rags their folly rue,  
The Victor and the Vanquish'd too.

Hear then, and deign to be my readers,  
Attorneys, Barristers, and Pleaders,  
Shrieves, Justices, and Civil Doctors,  
Surrogates, Delegates, and Proctors,  
Grave Judges too, with smiles peruse  
The sallies of a Lawyer's Muse,  
A buxom lass, who fain would make  
Your sober sides with laughter shake;

And, good my Lords, be kind and gracious,  
And though You deem her contumacious,  
Ne'er to the Fleet, or Bridewell send her,  
But spare a ludicrous offender,  
Who longs to make your muscles play,  
And give your cheeks a holiday.

Hear me, ye Wits, and Critics too  
And learned \* Dames in *Stocking blue*,  
And you, ye Bards, my book who dip in,  
In hopes to catch its Author tripping,  
Some Mercy still, and Justice shew him,  
And purchase ere you damn his Poem.

But chiefly thou, dear Job, my Friend,  
My kinsman to my verse attend ;  
By education form'd to shine  
Conspicuous in the Pleading line,

---

\* Κίελεύς μιν Τρωες καὶ ἑυκνήμιδες Ἀχαιοί. HOM.

For you, from five years old to twenty,  
Were cramm'd with Latin words in plenty,  
Were bound apprentice to the Muses,  
And forc'd with hard words, blows, and bruises,  
To labour on Poetic ground,  
Dactyls and Spondees to confound,  
And when become in Fictions wise,  
In Pagan histories and lies ;  
Were sent to dive at Granta's cells,  
For Truth in Dialectic wells,  
There duly bound for four years more  
To ply the Philosophic oar,  
Points metaphysical to moot,  
Chop logic, wrangle, and dispute ;  
And now, by far the most ambitious  
Of all the sons of Begersdicius,  
Present the Law with all the knowledge  
You gather'd both at School and College,

Still bent on adding to your store  
The graces of a Pleader's lore ;  
And, better to improve your taste,  
Are by your Parent's fondness plac'd  
Among the blest, the chosen few,  
(Blest,<sup>d</sup> if their happiness they knew,)  
Who for three hundred guineas paid  
To some great Master of the Trade,  
Have, at his rooms, by *special* favour,  
His leave to use their best endeavour  
By drawing Pleas, from nine till four,  
To earn him twice three hundred more ;  
And, after dinner, may repair  
To '*foresaid* rooms, and *then* and *there*  
Have '*foresaid* leave, from five till ten,  
To draw th' *aforsaid* Pleas again ;

---

<sup>d</sup> Sua si bona nôrint. VIRG.

While thus your blissful hours run on  
Till three improving years are gone,  
Permit me, with these rhymes, awhile,  
Your leisure moments to beguile,  
And guide your bold advent'rous ways  
Safe through that wide and pathless maze  
Where Law and Custom, Truth and Fiction,  
Craft, Justice, Strife, and Contradiction,  
With every blessing of Confusion,  
Quirk, Error, Quibble, and Delusion ;  
Are all, if rightly understood,  
Conspiring for the public Good,  
Like jarring Ministers of State,  
'Mid Anger, Jealousy, and Hate,  
In friendly COALITION join'd,  
To harmonize and bless mankind.

## LECTURE II.

*Of the KING and his Prerogative—Of the  
CIVIL and MUNICIPAL administration of  
public Justice, allegorically delineated and  
compared.*

THE 'KING, o'er ev'ry Cause supreme,  
Be first the prelude of my theme,  
In HIM, sans <sup>1</sup> *Laches* or <sup>2</sup> *Misfeasance*,  
Resides ideal <sup>3</sup> *Omnipresence*;

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<sup>2</sup> Εκ Διός ἀρχώμεσθα. THEOC.

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<sup>1</sup> *Laches* in French, *Lachès*, signifies slackness or negligence; upon the presumption that the King is daily employed in the weighty affairs of Government, it is an established rule at *Common Law*, that no *Laches* shall be imputed to HIM, nor He any way suffer in his Interests, which are certain and permanent. *Bac.*



HIM the just rights of Empire give  
 For ever in his Courts to live;  
 No wasteful lapse of rolling years  
 HIS JUST <sup>2</sup> PREROGATIVE impairs;

---

<sup>2</sup> *Misfeasance* signifies wrong doing: Lord C. J. *Hale* says, the Law presumes the King will do no wrong, neither indeed can He do any wrong.

<sup>3</sup> *Omnipresence*, or Ubiquity, is a consequence of the KING'S Prerogative—his Majesty, in the eye of the Law, is always present in all his Courts, although he cannot personally distribute Justice.

<sup>4</sup> *Prerogative*, Lord *Coke* says, is so called, because “ though an Act has passed both houses of Parliament, yet before it will be a Law the Royal Assent “ must be *asked*, or *demand*ed, and *obtained*,” (as indeed the etymology seems to import) “ but that it “ legally extends to all powers, privileges, and pre- “ eminences, which the Law giveth to the Crown.” *Co. L.* 90.—But the most *précise* definition of *Prero-*

E'en 'Time that's wont so swift to fly  
Stands motionless with Majesty;  
How long soe'er a Cause is stay'd  
By 'Orders, Rules, and Motions made

---

*gative*, is in *Finch*, L. 85. Prerogative, he says, is that Law in the case of the King, which is not Law in the case of a subject.

*'Time*—*Vigilantibus et non dormientibus jura subserviunt* is the Law in the case of the subject—*nullum Tempus occurrit regi* is the King's Plea. *Hob. 347*. The right of the King was never defeated by any length of Time till the 21 *Jac.* 1. c. 2, and act 9 *Geo.* 3. c. 15, which was framed to amend the former and render it more effectual. The King's Liberties and Franchises are expressly excepted from the operation of these acts.

*'Orders*—Orders and Rules are obtained by Motion in Court, which is an occasional application to the Court by the parties, or their counsel, to obtain some

On Points by learned Counsel mooted,  
The King can never be ' nonsuited.  
From HIM who feels his subject's woes,  
The healing stream of ' Justice flows ;

---

Rule or Order which becomes necessary in the progress of the Cause, and is usually grounded on an *Affidavit*.

<sup>7</sup> *Nonsuited*—A *Nonsuit* is a dereliction or renunciation of the suit, by the Plaintiff, before Verdict given, and is thus effected. The Plaintiff, or his agent, when he is apprehensive of a Verdict against him, withdraws himself out of Court, whereupon the Crier is ordered to call the Plaintiff, and if he or his agent does not appear, he is nonsuited, and is said *non sequi clamorem suum*—as the King cannot withdraw himself out of Court, he cannot be nonsuited. “ The King’s Majesty cannot be nonsuit, because in judgment of “ law he is ever present in all his Courts.” *Co. L.* 139.

<sup>8</sup> *Justice*—The King is the Fountain of Justice, and

From HIM, derives its genuine source,  
Howe'er polluted in its course,  
Howe'er unpalatable made,  
Defil'd, perverted, or delay'd ;  
Blest Fount! from you th'oppress'd and weak  
Ease to their cares and sorrows seek ;  
Where'er thy genial waters stray,  
Pride, Rapine, Fraud, and lawless Sway,  
Forbear the hallow'd ground to tread,  
While Truth by injur'd Virtue led  
With weeping Innocence attends,  
And prostrate o'er thy current bends,  
To quaff the cup which bounteous HEAVEN  
To all impartially has given ;  
But some amidst the legal throng,  
Who think to them thy streams belong,

---

all Courts derive their authority from him. Co. L.  
139.

Like those of Galen's learned Tribe  
Who some salubrious stream prescribe,  
But Chymicals and Drugs infuse,  
And all its healing powers abuse,  
Pain to their tortur'd Clients bring,  
And make thy pure and wholesome Spring  
Foul as the pools which devils mix  
At Chelt'nham, Harrowgate, or Styx ;  
And Law itself so rich is grown  
In terms and *nostrums* of its own,  
That e'en the Sages who expound  
Its truths and mysteries profound,  
(And none more learn'd, humane, and just .  
Have e'er discharg'd their sacred trust)  
Are forc'd to cite opinions wise,  
' *Crok. Car. Crok. Jac. and Crok. Eliz.*

---

<sup>9</sup> *Crok. Car.*—Judge Croke's Reports are cited in

And when some *recipe* they hit on,  
In <sup>10</sup> Glanville, Bracton, Coke, or Britton,  
Their friendly succour interpose,  
And hold the patient by the nose,  
With care administer the potion,  
Consult, and give him ease by *Motion*,

---

the names of those Princes in whose reigns the cases reported in his three volumes were determined, viz. Queen Elizabeth, King James, and King Charles I.

<sup>10</sup> *Glanville, Bracton, &c.*—*Glanville* was Chief Justice in the reign of Henry II. and wrote a book of Common Law, supposed to be the most ancient on the subject.

*Bracton* wrote his Treatise in the reign of Henry III. Sir *Ed. Coke* published his Institute and Commentary upon Littleton in the reign of James I.

*Britton* wrote his book in Edward the First's time by command of that King upon the model of *Justinian's* Institutions. *Staunford's Prerog.* 621.

And turn by tedious process quaint,  
Acute to Chronical complaint.  
Nor are there wanting who convey  
Their *Nostrums* in a Civil way,  
Doctors, who fond of consultations,  
Their Patients work with long quotations,  
And as the nature of the fact is,  
Torment them with a foreign practice  
Pleas'd in mysterious terms to speak,  
And cite some fav'rite *Empirique*,  
Some Quack, of note in days of yore,  
When Science from the Latian Shore  
To Albion came, and <sup>b</sup> Tibur's streams  
First join'd her social waves with Thames,  
'Twas then that fam'd Academician,  
That learned Monk and Politician,

---

<sup>b</sup> In Tiberim defluxit Orontes. JUVENAL.

He who VACARIUS was call'd,  
The wise *élève* of <sup>1</sup>THEOBALD,  
And others by their priests escorted,  
Those Books <sup>2</sup>of choice receipts imported,

---

<sup>1</sup> *Theobald*—Theobald, a Norman abbot, and archbishop of Canterbury, in the reign of King Stephen, introduced the Civil Law into England: among others of his retinue he brought over with him *Roger*, surnamed *Vacarius*, whom he placed in the university of Oxford to teach it to the people of this country. *Blac. Com.*

<sup>2</sup> *Those books*—A copy of the Pandects was discovered at *Amalfi* or *Amalfis*, a city of Apulia, in the following manner: Lotharius II. in the year 1137, being engaged in a war in behalf of Pope Innocent II. against Roger, King of Sicily and Naples, carried the city of Amalfi by storm, with forty-six Pisan galleys: upon plundering the city a copy of Justinian's Pandects was found, and from thence conveyed to Pisa, and afterwards to Florence, where it was kept in the



Which at *Amalfi* lay conceal'd  
 Till by *LOTHARIO*'s arms reveal'd,  
 With these, their fortunes to prefer,  
 They set up shop at Westminster;  
 ' But of their practice were debarr'd,  
 And fairly kick'd from Palace Yard,

---

duke's palace, according to Selden, and is never brought forth but with torch-light and tokens of reverence.

<sup>3</sup> *But of their practice*—The extraordinary rise and establishment of the Civil Law created a jealousy throughout all Europe. King Stephen issued a peremptory command preventing its propagation in England, and prohibiting Vacarius from reading Lectures at Oxford, and making it unlawful for any one to keep any of the books of the Roman Law by them. *Dissert. ad Flet. c. 7.*

“The nobility at all times rejected the Civil Law with  
 “a degree of asperity and ill humour—The Usurper  
 “Stephen, whole interest it was to conciliate their

Till thinking they had no intent  
To hurt th' establish'd Government,  
O'er rule the Laws and ride the Land  
With Romish edicts contraband,

---

"affections, went so far as to prohibit the study of it."  
*De Lolme.*

Charles the Ninth and Henry the Third of France issued edicts to the same effect in France. In Spain it was made capital to offer or allege the Roman Law as compulsive and binding, vid. *Bodin de Repub. Lib. 1. cap. 8*, of the impolicy of advancing the Laws of strangers in derogation of the Municipal Laws of the country.

Fortescue, Chief Justice of the King's Bench and afterwards Chancellor, carried his opposition to the Civil Law so far, that he wrote a book intituled "*De Laudibus Legum Angliæ*," professedly with a view to demonstrate the superiority of the English Laws over the Civil.

The Nation, proud of the submission  
Of men of birth and erudition,  
Gave them a lodging, and in pity  
Sent them to settle in the City,  
Begg'd them to gather up their alls,  
And vend their drugs behind St. Paul's—

*Provided always* that if e'er  
Said Quack or Quacks should interfere,  
Or any Quack, in word or deed  
Presume his Province to exceed,  
Or take upon him as a Scholar,

\*PROHIBITORY WRIT should follow:

---

*\* Prohibitory Writ*—Or Writ of Prohibition, is a Prerogative Writ issuing out of the King's Bench, and in some cases out of the Common Pleas, and the Chancery; and is directed to any inferior Court, enjoining their prosecution of a Cause therein depending upon a Suggestion that the cognizance thereof belongeth not to the Court. *F. N. B.* 39.

Blest Writ ! by which their fees are stay'd,  
And briefs into our bags convey'd !

A practice which must needs disgust 'em,  
For as we thrive, they lose their custom ;  
But what they lose, or what they gain,  
Has never yet disturb'd my brain :

---

This Writ is commonly granted upon motion, grounded on a Suggestion on Record, setting forth the nature of the complaint, and issues to enjoin the Counsel, Judge, and Register of the inferior Court, not to proceed any further in the Cause in question ; but in cases of doubt or difficulty, the Party applying is directed by the Court to *declare in Prohibition*, that is, to commence an Action by filing a Declaration, stating *a fiction in Law*, viz. that the other party has actually proceeded in the Suit *below*, notwithstanding the writ. And the Question as to the competency of the inferior Court being negatived upon Demurrer and Argument, the Prohibition to the inferior Court results as a consequence of the Judgment.

Let others heed such broils and bustles  
Who better can command their muscles ;  
Enough for me, when Client stands,  
With Purse and Parchment in his hands  
And claims my favour and protection,  
To keep my features in subjection ;  
Enough for me, with serious face  
To puzzle and perplex his Case,  
Then give his Purse a gentle squeeze,  
And taste the flavour of his Fees,  
His sweet Retainers and Refreshers,  
And leave these classical Professors  
Mid barren fields of Roman lore,  
Their dreary journey to explore,  
And lead thro' paths of fruitless Science  
Their comfortless bewilder'd Clients.

## LECTURE III.

*Comparison continued—Of the CIVIL LAW process—Excommunication—Serious Address to the Civilians, with certain weighty Interrogatories—MR. S \* \* \* E \* \* \* R's personal Superiority as a Common Lawyer—COUNSELLER BOTHER'UM and COUNSELLOR BORE'UM proposed to MR. JOB S \* \* E \* \* R as Models for his Imitation.*

KNOW *all* to whom these presents come  
 The <sup>1</sup> Pandects of Imperial Rome,  
 And every <sup>2</sup> Rescript and Opinion  
 Of <sup>3</sup> THEODOSIUS, <sup>4</sup> or JUSTINIAN,  
<sup>5</sup> Of ULPIAN, PAULUS, or PAPINIAN, }

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<sup>1</sup> *Pandects*—The Pandects, or Digests, are the writings of the ancient Civil Lawyers, systematically compiled by Justinian, and comprised in fifty books. Vid. *not. ante*.

<sup>2</sup> *Rescript*—The Rescripts of the Roman Emperors

With Him who studied and profess'd 'em  
And had the Stomach to digest 'em,

---

were the Expositions and Constructions which they were pleased to make of their own Laws by way of answer and opinion to the Cases referred to them.

<sup>3</sup> THEODOSIUS—A Code of CIVIL LAW was composed by order of the Emperor Theodosius the younger, and is still extant in sixteen books, containing a collection of the imperial constitutions, from Constantine, to his own Time. It received the imperial sanction in the year 438, A. C.

<sup>4</sup> JUSTINIAN—Justinian published his Code about a century afterwards in the year 530, and has preserved the Rescripts of the preceding Emperors.

<sup>5</sup> ULPIAN, PAULUS, &c.—The greatest part of this island was governed wholly by the Civil Law for about 300 years from Claudius to Honorius, during which time some of the most eminent Roman Lawyers, as Ulpian, Paulus, and Papinian, presided in the Courts of Justice of this country.

Old 'GOTHOFREDUS with a Corpus  
As fat and clumsy as a Porpus ;  
Him too with all his *Galimatias*,  
SCALIGER's Jewell, sage ' CUJACIUS,  
Though still they keep their ancient state,  
Their grandeur, dignity, and weight,  
And claim respect like veteran Beaux,  
Or Mountebanks in tarnish'd clothes,

---

<sup>6</sup> GOTHOFREDUS—Dionysius Gothofredus, an eminent Civilian, born at Paris in the year 1549, practised at Geneva in the year 1606, published in one large volume the whole body of the Civil Law, or *Corpus Juris Civilis*.

<sup>7</sup> CUJACIUS—*Ille Margarita Civilium, &c.* Vid. Scaligerian: the most eminent Civilian and most extraordinary Genius of his time; he was born at Toulouse in 1520, and taught and practised the Civil Law at Bourges. His works were published at Paris in ten volumes, in the year 1659.



Since <sup>8</sup> EDWARD from his subjects broke  
The bondage of the Roman yoke  
Are but a vain and empty shade  
Without the sanction and the aid,  
The forms, the process, and the mode  
Coercive of the British Code.  
How vain's the Civil Law's <sup>9</sup> *Citation*,  
The <sup>10</sup> *Libel*, <sup>11</sup> OATH, and <sup>12</sup> *Fulmination*,

---

<sup>8</sup> EDWARD—Edward the First put a period to the important struggle between the Laws of England and Rome. Under his discipline the Laws of England obtained a complete and decisive victory. *Blac. Com.*

<sup>9</sup> *Citation*—Is a summons to appear before an Ecclesiastical Judge. It contains five material points: 1st, Name of the Judge and style of the Court. 2. Defendant's name. 3. The day and place of appearance. 4. Plaintiff's name. 5. The cause. Citations are of various kinds, either general or special, inhibitory or intimatory, or *viis et modis*, or Prerogative

Which Surrogate is wont to shed  
By wholesale on the culprit's head !

---

Citations. For a more particular account, I refer the reader to the Proctors' Practice.

<sup>10</sup> *Libel*, or *Libellus*, in the Ecclesiastical Courts, answers to the Declaration in our Law, being a Charge drawn in writing on behalf of the Plaintiff, to which the Defendant is obliged to answer. A *Libel*, according to Lanfranc, *cap. quoniam de Petition*, is defined the Lawyer's Argument.

Quis, quid, coram quo, quo jure petatur, et a quo  
Recte compositus quisque Libellus habet.

Fragm. Vet. J. Cti.

Which is thus englished by an eminent Proctor—

Each Plaintiff and Defendant's name,  
And eke the Judge who tries the same,  
The thing demanded, and the right whereby,  
You urge to have it granted instantly,  
He doth a *Libel* right and well compose,  
Who forms the same, omitting none of those.

Did not the Shrieval arm exempt  
His *Brutum fulmen* from contempt,  
And lend a <sup>13</sup> Writ to back the curses  
Which he so piously disperses,

---

<sup>11</sup> *Oath*—In the Spiritual Court the answer of the Plaintiff is put upon Oath, which practice was adopted in the time of the clerical Chancellors, and has continued ever since.

<sup>12</sup> *Fulmination*—Denunciation of Ecclesiastical Censures, or Excommunication, of which there are two kinds, the *major* and the *minor*; the first is an exclusion from the Communion of Holy Church, and the company of the faithful; the second is an exclusion from the Sacrament, and divine worship: *Venatorius de sen. Excomm.* This latter is generally passed upon obstinate delinquents, refusing to appear upon Citation. The operative words were of old, *Auctoritate Dei Patris Omnipotentis, et Spiritus sancti, et beatæ Dei genetricis Mariæ omniumque sanctorum excommunicamus et a limitibus sanctæ mætris Ecclesiæ sequestramus, &c. Leg. Wic.*

With ease Respondent might evade  
The laws by Priests and Bigots made,  
Their forms and fees of Absolution,  
And schemes of Christian persecution,  
For while his Soul was doom'd to smart  
His body might in peace depart.  
E'en HE who erst his Judgments hurl'd  
With vengeance o'er the Christian world  
Pull'd down the mighty from their seats,  
Crush'd empires with his holy threats,

---

<sup>12</sup> *A Writ*—The *Significavit*, or *Writ de Excommunicato capiendo*, is here alluded to, which is a writ issuing out of Chancery, and so called either from the cause which gives birth to it, viz. the Bishop's certificate, or *significavit*, that the Defendant has stood excommunicate for the space of forty days, the time allotted for his absolution and reconciliation, or from its effects, in empowering the sheriff to take and imprison the Respondent in the county gaol until he is reconciled to Holy Church.

Absolv'd our souls, our sins forgave,  
And promis'd every w---- and k----

Celestial beds \* \* \* \*

\* \* \* \*

[*Here the manuscript is imperfect.*

\* \* \* \*

\* \* \* \*

Since then to Alfred's potent sway  
JUSTINIAN's Genius must give way,  
To Serjeant's coifs, Civilian's hoods,  
JUSTINIAN's Institute to Wood's,  
What boots it that your Youth is spent  
In dull <sup>a</sup> Cimmerian cloister pent?

---

<sup>a</sup> In dark Cimmerian desert ever dwell.

MILTON.

---

<sup>1</sup> *Cimmerian*—The Cimmerii were a people in Italy, near the Lake Averno, who lived in caves under ground,

Why brood ye o'er the toilsome page  
 Like Pupils of the Samian Sage .  
 In <sup>2</sup> Silence, till the cheerful Sun  
 Has twice seven years his circuit run,  
 Poring o'er PUFFENDORF and GROTIUS,  
 Ye learned sons of THEODOSIUS?  
 Say when your golden hours begin  
 "What are your rents and comings-in?"  
 Oh! say, for you can best inform us,  
 Good Doctor DRONE, and Doctor DOR-  
                   MOUS,  
 What mean those Periwigs enormous? }

---

inaccessible to the rays of the sun, where the Sibylls gave out their Oracles. See Hom. Odyss. xi. 14.

TIBULLUS iv. l. 6. 5.

<sup>2</sup> *Silence*—The year's silence imposed on the Doctors of the Civil Law, on their becoming advocates, as the condition upon which they are admitted to plead in the Ecclesiastical Courts.

Can you upon your OATH declare  
That all those costly loads of hair  
Are the clear produce of your gains,  
The clean net harvest of your brains?  
Are ye Proprietors of these,  
Or merely Usufructu'ries?  
I grant that Matrimonial Jars,  
Rapine, Adultery, and Wars,  
By others deem'd the worst of curses,  
Have done you Justice, fill'd your purses,  
And prov'd themselves no bad resources. }  
But in your starving times of Peace,  
When naval condemnations cease,  
And marriages are held in force  
By that construction in Divorce  
Which lately caus'd so much confusion  
Touching the doctrine of Collusion,

That Husbands now by Wives cornuted  
Are patiently to Bucks transmuted,  
And ne'er apply to cunning men  
To bring them to their Shapes again,  
Your visages, I must conclude,  
Will much increase in Longitude;  
Peace which brings blessings to the Nation  
Will make a Lent of long Vacation,  
Your Clients when they bring their Cases  
Will read Good Friday in your faces,  
And ev'ry individual cheek  
Remind them of an Ember week.  
Thank Heav'n, in War as well as Peace  
My person thrives, and fees increase;  
Not e'en the wretches I undo  
Will look so woe-begone as You;  
But though our separate walks we take,  
Though our respective Planets make



Such difference 'twixt Ourselves and You,  
Since two congenial Trades we woo,  
Both in the Folly of Mankind  
Such Comfort and Advantage find;  
Both to the field of battle go,  
Like Swiss to fight for Friend or Foe;  
I much esteem such worthy neighbours,  
And much your smiles will cheer my labours.  
While to my Kinsman I impart  
The secrets of the Pleading art,  
Teach him the best and readiest way  
To harass and secure his prey,  
Shew him the practice of *Attaching*,  
*Distraining*, hunting down and catching,  
In *Trespass* how to spread his net,  
In *Case*, in *Trover*, or in *Debt*,  
And not to spread alone, but draw  
Assignments, and demur in Law;

Then when the Issue is enroll'd,  
And at the Bar the story told,  
Give him with Eloquence and Grace  
So well to varnish o'er the Case,  
That e'en the Judge's curious eye  
Shall scarce its rotten parts descry,  
And though the facts as noon-day clear  
Against his Client's cause appear,  
Give him with fustian and bombast  
So thick a fog o'er truth to cast,  
With words of such due size and fitness  
To badger and confound a witness,  
That all who hear him shall confess  
For language, manner, and address,  
He fairly equals in renown  
Those two choice Heroes of the Gown,

---

So fam'd for Ciceronian Ease  
 And Demosthenic <sup>3</sup> ΔΕΙΝΟΤΗΣ,  
 Those Nestors of the British forum,  
 Th' illustrious BOTHER'UM and BORE'UM.  
 But since in these distressful days  
 When Hunger prompts Poetic Lays,  
 And Bards who feel no other fire  
 Than what th' Aonian nymphs inspire  
 No cordial sip, save what distils  
 From <sup>b</sup> AGANIPPE's purling rills,  
 Retiring from the Vales of Pindus  
 To garret vile with darken'd windows,

---

<sup>b</sup> ————— Cum desertis Agnappes  
 Vallibus esuriens migraret in atria Cliō.

JUV. Sat. 7. lin. 6.

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<sup>3</sup> ΔΕΙΝΟΤΗΣ—A character of oratory, which at once unites acuteness, energy, and perseverance. See Demost. Thucid. Isocrat. *passim*.

Are forc'd by lofty invocations  
To swell their meagre publications,  
And while they rest in time of need  
To bait the Pegasean Steed,  
Implore some Deity's kind favour  
To give their tasteless rhymes a flavour,  
I, who by Law and Justice claim  
As fair pretensions to the same,  
Shall beg some Godhead to attend  
And help me to my Journey's end,  
And lengthen out by frequent pauses  
My Lectures, as I've done my Causes.

And first bright CYNTHIUS I'll *Subpæn'*  
From hallow'd fount of HIPPOCRENE,  
And summons from th' Aonian Grove  
The Daughters of Olympian Jove;  
But if those sweet harmonious Maids  
Disdain to quit their vocal shades,

Nor Cynthus will his Fount forsake—  
To gloomy Dis my prayer I'll make,  
And seek the Acherontic Lake,  
Down to the Hall of Erebus I'll go,  
And *move* some Dæmon in the *Courts below*.

---

\* Flectere si nequeo Superos Acheronta movebo.

VIRG.

## LECTURE IV.

*Of the COMMON LAW Process—Invocation  
to an Infernal Spirit—Of the ORIGINAL,  
or Original Writ—And Process thereon—  
The High Sheriff—His Executive Power—  
Of Law Fictions.*

COME then thou Goddess of Contention,  
Genius of Craft, and Circumvention,  
You, who in parchment Robes array'd,  
And tape-tied vest of vellum made,  
With ink-stain'd lips, and eye-balls blear'd,  
And thumbs with wax and rosin smear'd,  
The baleful bitter draughts prepare  
Of Poverty, Revenge, and Care,  
And every tender tie remove  
Of Amity and Social Love ;  
Where'er you wield the Law's machine,  
Whether at Lincoln's Inn you're seen,

Or those fam'd-walls where Serjeants sleep,  
And plodding Clerks their vigils keep,  
Or at the Temple, as thy trust is,  
Open the sacred mint of Justice,  
Whate'er the learned haunt you love,  
Where'er thy busy footsteps move,  
Say, if some dire occasion leads  
Two simple wights to logger heads,  
Such as of late bred doleful dudgeon  
'Twixt JOHN-A-GULL, and JOHN-A-GUD-  
GEON,

(Those ill-starr'd Chiefs whose wrath to sing  
'Vent'rous I 'wake the trembling string,)   
What instrument of dread import  
Must bring the parties into Court,  
From Juries to obtain relief,  
And justice from a Counsel's brief?—

The ' Writ—from Chancery it came,  
 And Pleaders must adore the name,  
 The Writ that works the public Good  
 Oft saves th' expence of Christian Blood :  
 Oft, when two Champions burn with rage  
 And pant in combat to engage,  
 Both fix'd their valour to proclaim,  
 Both resolutely bent to aim  
 (Whether with paper charg'd or lead)  
 A Pistol at each other's head,  
 Calmly steps in, bid Reason 'wake,  
 And Wrath her rash resolves forsake,  
 The instruments of Death restrains  
 And spares a trembling Hero's brains,

---

α Τις' ἴ' αὖρ σφῶς θεῶν ἔριδι ξυνέηκε μάχεσθαι ;  
 Ἀηΐδς καὶ Λιδς υἱὸς — HOMER.



Yet loth to disappoint the Devil,  
 Involves them in a sorer evil,  
 The worst of evils 'tis confess'd  
 (But guard this secret in thy breast),  
 With LAW entangles and turmoils,  
 And holds them in a Pleader's Toils—  
 The WRIT <sup>1</sup> ORIGINAL—the root  
 And master spring of ev'ry suit,  
 Which erst in mouldy <sup>2</sup> hamper slept  
 By Lawyers *Hanaper* yclept,

---

<sup>1</sup> ORIGINAL—This writ is so called Κατ' Εξοχήν, being the writ which gives the Courts of Common Law a Jurisdiction, and that upon which all subsequent Process is founded.

<sup>2</sup> *Hamper* or *Hanaper*—In Latin *Hanaperium*. The *Hanaper office* belongs to the Common Law Court in Chancery. Original Writs, in all matters of a civil nature between subject and subject, were kept according

Was held much learning to display  
When learning in her Cradle lay ;  
Then first its influence began  
To charm like Eastern Talisman,  
In form grotesque, and antique guise,  
Which Justice did of old devise,  
With Parchment wing and <sup>3</sup>Signet pendant  
Flew forth to summons the Defendant,

---

to the simplicity of ancient times, in a hamper, as those in which the interests of the Crown were concerned were preserved in a *small bag*, (*in parvâ bagâ*) which is the foundation of what is now called the Petty bag office. *Black. Com.* Vol. 3. c. 4.

<sup>3</sup> *Signet Pendant*—"The Original Writs issued out of Chancery, because when the Courts were but one, the Chancellor held the Seal, therefore, when they were divided, he, still keeping the Seal, sealed all Original Writs. By this means the Seal was a Check-

Stuttering abbreviations mystic  
In sign and token cabalistic,  
Latin surcharg'd with Norman French  
Returnable to *\* Common Bench*,  
A mixture, which like that of Babel,  
The Shrieve to construe was not able,  
And though by Law no human creature  
*\* Ad impossibile tenetur*,

---

“upon the other Courts, to know what Cause was  
“there.” GILBERT *Com. Pleas*, p. 2.

*\* Returnable, &c.*—The original being made returnable in Common Pleas, gives the Court Jurisdiction to hold Plea of the matter therein specified, as it does in the King's Bench, when made returnable in that Court.

*\* Ad impossibile* The Law obliges no man to perform impossibilities.

Defendant at the Shrieve's command  
Must at his peril understand ;  
But He perhaps who lack'd the wit  
To scan the learning of the Writ,  
Was much too wise at once to close  
And grapple with his injur'd Foes,  
Might rather wish to be excus'd  
From taking pains to be abus'd,  
Content his person to ' *eloign*,  
Or stay at home and cast ' *Essoign* :

---

<sup>6</sup> *Eloign*—*Eloigner*, French.—To remove, or send away.

<sup>7</sup> *Essoign* or *Essoine*, Fr. *Essonium*, Latin, signifies an excuse for him who is summoned to appear to the *Original Writ*. The original writ is made returnable within fifteen days, the *Essoign* day is the first of three days next immediately preceding which the Court sits

But though the Law in modern days

\* Three barbarous Tongues no more displays,

---

for the dispatch of Business, and on which the defendant is obliged to appear to the Writ.

<sup>8</sup> *Three barbarous, &c.*—Till the reign of Edward the Third all Proceedings at Law were in the old Norman French, but by a Statute of that King's reign, (36. c. 15.) it was enacted that all Pleas should be pleaded, &c. in the English tongue, but be entered and enrolled in Latin. The Latin which succeeded the French, and which was in truth a composition of French, English, and Latin, continued in use for 400 years, without interruption, till the Usurpation of Cromwell, when the language of the Record was altered into English; but at the Restoration, the Latin language was again used, and continued till the year 1730, when it was finally altered and settled by 4th Geo. II. c. 26.

Like Pluto's triple-headed monster,  
And Pleaders can their Pleadings construe,  
Though Sheriffs now the Writ's intent  
Are taught by Act of Parliament,  
And all mankind so wise are reckon'd  
E'er since the fourth of George the Second,  
That none against the Laws in use  
From Ignorance can plead Excuse,  
Still less the Suit should be delay'd,  
And Justice at her Fountain stay'd,  
A<sup>9</sup> *Capias* is conceiv'd and born  
Ere yet the ORIGINAL is drawn,

---

<sup>9</sup> *Capias*—A Writ so called from the most operative word in it, is of two sorts, the one a *Capias ad Respondendum*, before judgment, being a Process to compel the Defendant to answer, as it occurs in this place, and the other a *Capias ad Satisfaciendum*, which is a Writ of Execution. The practice here alluded to is that

To justify the Court's proceedings,  
Its Forms, its Processes, and Pleadings,  
And thus, by ways and means unknown  
To all but Heroes of the Gown,  
A Victory full oft is won  
Ere battle fairly is begun ;  
'Tis true, the wisdom of our Laws  
Has made th' Effect precede the Cause,

---

which is now in use, and was introduced on the discontinuance of real Pledges, for ease and expedition, whereby the Original is become in effect a mere useless and unnecessary process, but nevertheless considered as indispensable in warranting the *Capias*, and giving the Court Jurisdiction, and is therefore supposed to be actually subsisting before the *Capias* is sued out, although it is notorious that after the Roll is made up, the Curſitor makes out the ORIGINAL to warrant the *Capias*, and delivers it to the Filazer to be filed with the *Custos Brevium*.

But let this Solecism pass—

<sup>10</sup> *In fictione æquitas—*

---

<sup>10</sup> *In fictione Juris consistit æquitas—Legal fictions  
are grounded on Principles of Equity—*



## LECTURE V.

*Process continued—Of the Writs LATITAT—  
CAPIAS—QUO MINUS—Of filing Common  
Bail—Of Special Bail, or Bail to the Action.*

LIGHT lie the sculptur'd Marble o'er his  
Breast,  
Blaz'd be his Virtues, and his Sins suppress'd,  
And wheresoe'er his bones are laid  
Thrice honour'd be that Lawyer's Shade  
Who Truth with Nonsense first combin'd,  
And EQUITY with FICTION join'd,  
And had the goodness to assign us

<sup>1</sup> LATITAT, <sup>2</sup> CAPIAS, and <sup>3</sup> QUO MINUS!

---

<sup>1</sup> LATITAT—A Writ so termed, because it suggests  
as the ground of the power therein given to the sheriff,  
A FICTION in Law, viz. that the Defendant is not to

Melodious Sounds ! at once they cheer  
My spirits, and regale mine ear,

---

be found in the County of Middlesex to be taken by Bill of Middlesex, as it is called, but lurks and lies hid, or, as it is expressed, *runs up and down secreting himself*, within the Bailiwick of the Sheriff, to whom the writ is directed. F. N. B. 78. It is in *practice* the first process in order to compel an appearance in the King's Bench, in the like manner as the *Capias* is in the Common Pleas: the *Capias* proceeds as was before shewn upon a Fiction, that the Original had been previously sued out, and the *Latitat* issues in the King's Bench upon the like *Fiction*, that the Bill, which is called the Bill of Middlesex in that Court has actually issued to the sheriff of that County, and been returned as ineffectual.

<sup>2</sup> *Capias*—Vid. ante, p. 40, in notes (9)

<sup>3</sup> *Quo Minus*—Is the first Process in the Exchequer, as the *Latitat* is in the King's Bench; it issues upon a surmise that the Plaintiff is the King's Debtor, which

What Bard howe'er in Fiction vers'd,  
By rhyme *subpæna'd*, and coerc'd,  
Due homage to their worth shall pay  
And all their various powers display?  
If haply *John-a-Stile* provoke  
The legal fight 'gainst *John-a-Noke*,  
The LATITAT the foe besieges,  
And baffles him in *Banco Regis*.  
Skill'd with <sup>4</sup> *Ac-Etiams* to perplex  
And foils with <sup>5</sup> *Bills of Middlesex*,

---

serves to give the Court a Jurisdiction. It is called *Quo Minus*, because the Plaintiff, being for this reason, supposed to be the King's Debtor, it is suggested as of course, that he is the less able to pay the Debt by reason of the Injury complained of in the Action.

<sup>4</sup> *Ac-Etiam*—An *Ac-Etiam* is a Clause inserted in the *Latitat*, by virtue of the 13th Car. II. c. 2, which enacts that no writ of Trespass should hold Defendant

Quo MINUS guides the wordy war,  
And <sup>6</sup> *mates* him at th' Exchequer Bar,

---

to bail, &c. any further than an Appearance, unless the true Cause of Action was expressed in the Writ. And therefore in a *Latitat* it runs thus, after the words to answer A. B. in a Plea, &c. AND ALSO to a Bill of the said A. against the said B. to be exhibited according to the Custom of our Court before us for £— upon promises, or debt, as the Case may be.

<sup>5</sup> *Bill of Middlesex*—A *Bill of Middlesex* is a Precept directed or presumed to be directed to the Sheriff of that County in which the Court of King's Bench sits, for if it sat in any other County, it would be termed a Bill of that County; it is called a Bill, and signed *Per Billam*, to distinguish it from the *Original*. It formerly issued to warrant the *Testatum*, or as it is now called the *Latitat*, of which above; but modern practice has consolidated the two writs in Effect, by reciting in the *Latitat* that the *Bill of Middlesex* has already issued, which is generally *false*.

<sup>6</sup> *Mates him*—The Exchequer took its name a *Tabulá*

While CAPIAS is rejoic'd to seize  
And plunder him at <sup>7</sup> *Common Pleas* :  
Nor will it boot th' indignant *Noke*  
Or God or Goddess to invoke,  
Nor God nor Goddess shall convey  
His person from th' impending fray,

---

*ad quam assidebant.* Camden Brit. p. 113. The Table is covered with cloth resembling a chess board, whereon when certain of the King's accounts are made up, the sums are marked and scored with Counters. *Blac. Com.* vol. III. p. 44.

<sup>7</sup> *Common Pleas*—*Communia Placita.* The Court of Common Pleas holds connusance of all Pleas which are not of the Crown, and which being between subject and subject, are properly denominated *Common Pleas*. Some have supposed that the word *Pleas* is short for the word *Pleasures*, and that the term *Common Pleas*, as applied to the practice of the Court, means the *Pleasures of the Community*.

Doom'd in the Action to *appear*,  
 \* E'en though the ambient Cloud he wear,  
 Which Laertiades of yore,  
 Or Citherea's offspring wore.  
 For lo ! a grisly Shrieval Band  
 That round the seat of Justice stand,  
 \* Give dreadful *Note* of Preparation  
 And *summons* him to litigation,  
 Force him the doubtful war to wage,  
 To file his <sup>9</sup> Sureties and engage,

---

a ———— ———— *Αὐτὰρ Ἀθήνη*

*Πολλὸν ἥερα χεῦτε φίλα φρονέες Ὀδυσῆι.* HOM.

*At Venus obscuro gradientes aere sepsit*

*Et multo nebulæ circum Dea fudit amictu.*

VIRG. ÆN.

---

\* *Note of Preparation*—The *English Notice* is here alluded to, which is used in all cases where the Defendant is not to be held to Bail.

Or if the *Summons* he resists,  
<sup>10</sup> *Enters his name* upon the Lists,  
Where each blest *Fiction* is enroll'd  
The legal conflict to uphold,  
All for the wisest ends constructed,  
That Suits may better be conducted,  
That every Lawyer in his Station  
May reap the fruits of his Vocation,  
That Pleas and Pleadings may prevail,  
And Justice equal hold her golden Scale.

---

<sup>9</sup> *Sureties*—Viz. Common Bail, *Messrs. John Doe and Richard Roe.*

<sup>10</sup> *Enter his name*—In case the Defendant fails to file *Common bail*, or *enter his Appearance*, the Statute 12th Geo. I. empowers the Plaintiff to *enter an Appearance for him*, and to leave a Declaration in the proper Office, and upon giving him Notice to plead thereto, to proceed to Judgment.

But yet alas ! not all conspire  
Such legal wisdom to admire  
There are of Writs who disapprove  
" Dread Bail *below* and Bail *above*,

---

" *Bail below and bail above*—The word *Bail* is derived from the French *bailler*, to *deliver*, because the Defendant when arrested, is delivered over to his Sureties, who bind themselves for his forth-coming at a day and place certain. *Bail below* is the Bail to the Sheriff, taken by him, upon the Execution of the Writ of Arrest. The species of Bail is called *Special*, as contradistinguished from *Common* Bail, before-mentioned, the Sureties being real and substantial bondsmen, and not fictitious, as in the case of *Common* Bail. *Bail above* is the Bail in Court, upon the Defendant's appearance at the return of the Writ, or four days after. It is likewise termed *Bail to the Action*, and is effected by what is called *Justifying Bail*, or the Oath of the Sureties upon examination as to their competency and responsibility.



Whom worse than Goblins damn'd, the sight  
Of Sheriff's myrmidons affright,  
The silver Tag, and vermil Stamp  
Chill to the soul with horror damp :  
These scent the Process from afar,  
And fly the Din of Parchment War ;  
But let the Plaintiff, ere he sue  
<sup>12</sup> In *debt* or *case* for money due,

---

<sup>12</sup> *In debt*, &c.—By Debt, or action of Debt, is meant an Action for a determinate specific sum ; it is usually brought upon Specialities, i. e. Debts arising upon Deeds and Instruments under seal. The ordinary remedy for indeterminate sums is by *Action on the Case*, as it is called, i. e. upon the particular circumstances of the case ; this remedy is granted at Common Law, and by virtue of the Statute of Westminster, the second, 13th Ed. I. &c.

By 12th Geo. I. the Plaintiff is obliged to make affidavit of his Debt, and that the sum due is £ 10. or upwards, before he is entitled to hold Defendant to

Swear to the sum, the Writ indorse,  
And let the Shrieve said writ enforce,  
Be quick to execute, but slow  
To take the proffer'd bail *below*,  
Lest with the Plaintiff's Suit embroil'd,  
The <sup>13</sup> Shrieve at his own weapons foil'd;

---

Bail; and if he is desirous of taking a Security above £40. he is by the Statute of 13th Car. II. c. 2, obliged not only to swear to the Sum, but have it inserted in the body of the Writ, or Process. The Practice is to mark the Sum sworn to by the Plaintiff on the back of the Writ, c. gr. *Bail by Affidavit affiled for* £10. and the Sheriff is then required to arrest the Defendant; where the Debt is under £10. the Defendant can only be served with a Copy of the Writ or Process, with an English Notice subjoined.

<sup>13</sup> *The Shrieve, &c.*—If the Sheriff accept bail, which afterward prove insolvent, and does not cause sufficient bail to be put in *above*, he will be himself responsible to the Plaintiff.

The bond assign'd, the Debtor fled  
Himself Defendant in his stead,  
Be doom'd with curses to bewail  
The horrors of insolvent Bail,  
His folly to his Cost expose,  
And bear the weight of other's woes;  
Till by the Plaintiff vex'd, and sped,  
Fresh Suits impending o'er his head,  
He feels in dreams, or seems to feel,  
14 His own Bum-bailiff at his heel,  
Flies his own writs, and strives to shun  
Th' ideal form of frightful Dun,

---

The Sheriff is liable to an Action for taking insufficient Bail, as well as to Amerciament. *Raymond*, 425. *Salk.* 99. *Sid.* 96. 2 *Saund.* 58, 59.

14 *Bum-bailiff*, is a corruption of the word bound-bailiff, or special bailiff, as contradistinguished from the Bailiff of a Hundred.

Which e'en in Sleep his arm assails,  
Nor aught his Shrieval wand avails,  
To conjure down the restless Sprite,  
Or speed him in his fancied flight.

## LECTURE VI.

*Of Process against Privileged Persons—Of the  
DISTRINGAS—Its physical and chirurgi-  
cal Qualities—Process to OUTLAWRY, and  
the Party's Appearance upon the CAPIAS  
UTLAGATUM.*

LIVES there a Senator un plac'd,  
Already ruin'd and disgrac'd,  
A Legislator who retires  
Before his *Privilege* expires,  
*Sans* House, *sans* Land, *sans* Goods and  
Chattels,  
Or party friend to fight his battles?  
No writ his footsteps can detain,  
No process can his Skin distrain,  
And though a sudden DISSOLUTION,  
Might fit him for an Execution,

'Twere best a prudent course to take,  
And spare him for his Country's sake,  
For could a Member's skin when dried,  
Make parchment ' like JOHN ZISCA's hide,  
Would it not savour of extortion  
Should ev'ry Lawyer take his portion?  
Great heroes howsoe'er inclin'd  
To harass and destroy mankind,  
Ne'er flesh the steel, or roll the thunder,  
Without some hopes of fame and plunder,  
And LAWYERS who no less delight in  
The trade of quarrelling and fighting,

---

\* *John Zisca*—This anecdote of John Zisca is recorded in Mr. Burke's celebrated letter to the Duke of Bedford, which leaves little room to doubt but that this very eminent and ingenious writer must have obtained a sight of Mr. Surrebutter's Professional Lectures in the original MS.

Should be as kind and tender hearted  
To those who with their Cash have parted,  
Ne'er from the paths of Honour swerve,  
But hold compassion in reserve,  
And where they see no hopes of booty  
Abate the rigour of their duty.

'Tis true there are in whom you'll find  
Birth, splendor, pride, and meanness join'd,  
Who Writs by *Privilege* elude,  
Yet labour for the public Good,  
Against a Nation's debts inveigh,  
Yet scorn a Tradesman's bill to pay,  
Who pains and penalties create  
For grand Defaulters in the State,  
Yet fain would 'scape the Sheriff's search  
And leave a Plaintiff in the lurch ;  
But thou, O Shrieve, art not the son  
Of that wise Jew, King Solomon,

Nor canst thou claim the least pretence  
To *Common* Law or *common sense*;  
Shouldst thou one legal step neglect  
Their stubborn humours to correct,  
Take your <sup>2</sup>DISTRINGAS, come athwart'em,  
And operate *secundum artem* :  
You'll find it in its full extent,  
A pretty useful instrument,  
For making *Issues* with, the quicker  
To drain their Cash into th' Exchequer,

---

<sup>2</sup> *Distringas*, or *Distress infinite*—This Writ commands the Sheriff to distrain the Defendant from time to time, and continually afterwards, by taking his goods and the profits of his Lands which are called *Issues*, and which by the Common Law he forfeits to the King; but the Court may direct the *Issues* to be sold to defray the reasonable costs of the Plaintiff.—  
*Bl. Com.*



With this same instrument pursue 'em,  
And drain them till you quite undo 'em;  
Work them till thoroughly aggriev'd,  
Of goods and chattels they're bereav'd;  
In every legal operation  
There's nothing like evacuation.

But is there one who unprotected  
Has long his creditors neglected  
Without the privilege to shine  
Or slumber in St. Stephen's shrine,  
A lazy wight of snugness fond,  
Who'd fain from love and ease abscond,  
And just has learn'd enough of Law  
To make him all its ways abhor,  
Has heard that <sup>3</sup> *Quare clausum fregit*

---

<sup>3</sup> *Quare clausum fregit*—The Writ of *Capias* before mentioned as the leading process of the Court, is here

May breed a monster called <sup>4</sup> *Elegit*,  
Conceives that <sup>5</sup> *Ca sa*'s are vexatious,  
And shudders at a <sup>6</sup> *Fieri facias* ?

---

alluded to under a different name ; if the Defendant is to be held to bail, it is used with an *ac Etiam*, (of which before) and is called a *bailable Capias* ; if not, the *English Notice* is subjoined, in lieu of the *ac Etiam*, in pursuance of the 12th Geo. I. and it is then called a *common Clausum fregit*.

<sup>4</sup> *Elegit*—Is a Writ of Execution against the Goods and Chattels, and also one half of the Defendant's Lands, to be held by the Plaintiff until the Debt or Damages and Costs are satisfied.

<sup>5</sup> *Ca' sa*'s—A *Ca' sa'*, as it is called, or *Capias ad satisfaciendum*, is a Writ of Execution directed against the Body of the Defendant, in satisfaction of the Plaintiff's debt.

<sup>6</sup> A *Fieri facias* is another Writ of Execution, direct-

If rich, do thou, O Shrieve, make sure  
His goods or person to secure,  
Give HIM by way of how d'ye do  
A smack of your DISTRINGAS too,  
But first 'attach him, and attend  
With *Capias ad Respondend'*,

---

ing the Sheriff to cause to be made or levied, (*facias fieri*), from the goods and chattels of the Defendant, sufficient to satisfy the Plaintiff's debt and damages.

7 *Attach him*—The Student will observe the order of the Process to Outlawry regularly pursued; but it would swell these Notes to an inconvenient length, were the Editor to dwell longer in detail upon the subject than may be absolutely necessary to illustrate the Text. The *Original* or *Præcipe* has been already mentioned, which is followed by the *Attachment*, or writ of *Pone*, the *Distringas* and *Capias ad satisfaciendum*, concerning which we have already treated.

Let loose the Dogs of War and furies,

<sup>8</sup> TESTATUM, ALIAS, and PLURIES ;

But if at length *non est invent'*,

At him again with <sup>9</sup> *Exigent*,

---

<sup>8</sup> *Testatum*, or *testatum Capias*, is a second Writ of *Capias*, directed to the Sheriff of another County upon the return of the first *Capias*, and is so called from the principal word that occurs in it; it recites the former writ, and states that it is *testified* or (*testatum est*) that the Defendant *lurks* or *wanders in the bailiwick* of the Sheriff to whom the Writ is directed, and upon the Sheriff's return of *non est inventus*, there issues successively the *alias* Writ and the *pluries* Writ, which are so called because after the words "we command you," (*præcipimus*) the words *sicut alias*, or *sicut pluries*, "as we have formerly, or, as we have often commanded you," occur in these Writs, as the reason of their being issued.

<sup>9</sup> *Exigent*—If the Sheriff returns *non est invent'* upon all the writs, a Writ of *Exigent* may be sued out, which

Proclaim him by the Act's direction

(*Act 31st Eliz. 3d Section*)

Then smite him as a *Coup de grace*

With <sup>10</sup> *Utlagatum Capias*.

*Exacted, outlaw'd, and "embruted,"*

His head to head of <sup>11</sup> *Wolf* transmuted,

requires the Sheriff to cause the Defendant to be proclaimed, required, or exacted, in five County Courts successively, and if after being so exacted, he does not appear, he is outlawed.

<sup>10</sup> *Utlagatum Capias* is the Writ authorizing the arrest of the Defendant, and his Commitment to Prison till the Outlawry is reversed.

<sup>11</sup> *Wolf*—Alluding to the ancient Common Law Doctrine of Outlawry, the punishment whereof was Death, and therefore an Outlaw was said to bear *caput Lupinum*, because any man might kill him as he might kill a wolf. *Utlagata et wariata, capita gerunt Lupina*

Compell'd by writ of *Exigenter*  
The Lists against his will to enter,  
See where the Captive Wretch in Court,  
Meet subject both for gain and sport,  
By Writ, as by the Cup of CIRCE,  
Transform'd, and at the Plaintiff's mercy,  
Stands like a Roman Gladiator,  
To do a deed against his nature ;

---

*quæ ab omnibus impunè poterunt amputari, merito enim sine lege perire debent quî secundùm legem vivere recusant.* Process to Outlawry lies in all actions *vi et armis* ; by Stat. 13th Ed. I. it lies in account ; by 25th Ed. III. c. 17, it lies in Debt, Detinue and Replevin ; and by 19th Hen. VII. it lies in Case and in Trespass ; it is now considered, and used only as a process to compel an Appearance, and may be reversed upon the Defendant or his Attorney appearing in Court, and indemnifying the Plaintiff in full Costs.

While we who compass'd his undoing  
Claim the sole merit of his ruin ;  
For this we never sought your aid,  
Ye Doctors of the Civil Trade,  
Nor ever thank'd you for a *Curse*  
To help us to Defendant's purse,  
Or strip him of a single Chattel,  
Ye learned votaries of VATTEL.

Now, Doctors, reperuse this Case,  
And study the Defendant's face,  
Read in his looks the operation  
Of legal charm and conjuration,  
A woeful visage worn with Cares ;  
Such as an exil'd Patriot wears—  
But could you gain a sight of mine,  
You'd take me for a sleek Divine,  
Whose smooth Cherubic features show  
The fruits which from good living flow ;

'Tis true the nature of my Face  
Bears fewer signs of inward Grace,  
Though something on the whole you'll find  
Which indicates no vulgar mind,  
A certain graceful tinge of Copper,  
That's quite professional and proper:  
But by what charm or magic spell  
*I* look so plump, and thrive so well,  
So gay, so blithe in my demeanour,  
While you so splenetic and lean are,  
If I am *cited* to *confess*,  
The Muse shall venture to digress,  
In sportive Rhyme of artless mould,  
Her "plain unvarnish'd tale unfold,"  
And cheerfully obey your *Summons*,  
Good Gentlemen of DOCTORS COMMONS.



## LECTURE VII.

*An Episode containing authentic Memoirs of  
MR. SURREBUTTER'S Professional Career.*

WHO'E'ER has drawn a Special Plea  
Has heard of old TOM TEWKESBURY,  
Deaf as a post, and thick as mustard,  
He aim'd at Wit, and bawl'd and bluster'd,  
And died a *Nisi prius* Leader—  
That Genius was my SPECIAL PLEADER—  
That great man's office I attended  
By HAWK and BUZZARD recommended,  
Attorneys both of wondrous skill  
To pluck the Goose and drive the Quill;  
Three years I sat his smoky room in,  
Pens, paper, ink, and pounce consuming,  
The fourth when *Essoign Day* begun,  
Joyful I hail'd th' auspicious Sun,

Bade TEWKESBURY and Clerk adieu,  
(\* Purification, eighty-two)  
Of both I wash'd my hands ; and though  
With nothing for my cash to show,  
But Precedents so scrawl'd and blurr'd,  
I scarce could read one single word,  
Nor in my Books of Common Place  
One feature of the Law could trace,  
Save BUZZARD's nose and visage thin,  
And HAWK's deficiency of Chin,  
Which I while lolling at my ease  
Was wont to draw instead of Pleas ;  
My chambers I equipt complete,  
Made Friends, hir'd Books, and gave to eat;

---

\* *Purification*--The morrow of the Purification of the Blessed Virgin Mary is one of the return days of Hilary Term.

If haply to regale my friends on,  
My Mother sent a haunch of Ven'son,  
I most respectfully intreated  
The choicest company to eat it,  
To wit, old BUZZARD, HAWK, and CROW,  
*Item*, TOM THORNBACK, SHARK, and Co.  
Attorneys all as keen and staunch  
As e'er devour'd a Client's haunch;  
Nor did I not their Clerks invite  
To taste said ven'son hash'd at night,  
For well I know that hopeful Fry  
My rising merit would descry,  
The same litigious course pursue,  
And when to fish of prey they grew,  
<sup>a</sup> By love of food and contest led,  
Would haunt the spot where once they fed;

---

<sup>a</sup> Egit amor Dapis atque Pugnæ. HOR.

Thus having with due circumspection  
Form'd my professional connexion,  
My desk with precedents I strew'd,  
Turn'd critic, danc'd, or penn'd an ode,  
Studied the *Ton*, became a free  
And easy man of Galantry :  
But if while capering at my Glass,  
Or toying with some fav'rite Lass,  
I heard th' aforesaid HAWK a-coming,  
Or BUZZARD on the staircase humming, -  
At once the fair angelic maid  
Into my Coal-hole I convey'd, ~~+~~  
At once, with serious look profound  
Mine eyes commercing with the ground,  
I seem'd like one estrang'd to sleep,  
“ And fix'd in cogitation deep,”

Sat motionless, and in my hand I  
Held my ' *Doctrina Placitandi*,  
And though I never read a page in't,  
Thanks to that shrewd well-judging Agent,  
My Sister's husband, Mr. SHARK,  
Soon got six Pupils and a Clerk ;  
Five Pupils were my stint, the other  
I took to compliment his Mother ;  
All round me came with ready money,  
Like Hybla bees surcharg'd with honey,  
Which, as they press'd it so genteely,  
And begg'd me to accept so freely,

---

<sup>3</sup> *Doctrina Placitandi*, " or the art and science of Special Pleading, a book so entitled, shewing where and in what Cases, and by what Persons, Pleas, as well real as personal, and mixed, may be properly pleaded."

Seem'd all so fond of SPECIAL PLEADING,  
And all so certain of succeeding,  
I, who am always all compliance,  
As well to Pupils as to Clients,  
Took as genteely as they paid it,  
And freely to my purse convey'd it;  
That I might practically show,  
And they in *special* manner know,  
Ere they begun their Pleas to draw,  
What an <sup>4</sup> ASSUMPSIT meant in Law—  
*To wit*, for divers weighty sums  
Of *lawful cash* at Pleader's Rooms,

---

<sup>4</sup> *Assumpsit*—A form of Action so called. When one man becomes legally indebted to another, the Law implies a Promise of Payment, for which, what is called *indebitatus assumpsit* lies.

By me said Pleader, as was prudent,  
' *Had and received* to use of Student;  
In short, I acted as became me,  
And where's the Pleader that can blame me?  
Not one of all the trade that I know,  
E'er fails to take the Readyrino,  
Which, haply, if his purse receive,  
No human art can e'er retrieve.  
Sooner when Gallia's credit's flown  
To some *Utopian* world unknown,  
' *ASTRÆA* shall on earth remain  
The last of the celestial train,

---

¶ *Ultima cælicolûm Terras ASTRÆA, reliquit.*

VIRG.

---

§ The action for *money had and received*, lies only for money which, *ex æquo et bono*, Defendant ought to

To tender *Assignats* at *Par*  
Triumphant in the *Champ de Mar'*,  
And when their deep-laid projects fail;  
And *Guillotines* no more avail,  
Her baffled Statesmen shall excise  
Some new found region in the skies,  
And tow'ring in an air balloon  
Pluck *Requisitions* from the Moon;  
Sooner the daring wights who go  
Down to the watery world below,  
Shall force old Neptune to disgorge  
And vomit up the ROYAL GEORGE,

---

refund. Com. dig. Tit. Action on the Case—in assumpsit, a. 1.

For money paid by mistake, or on a consideration which happens to fail. *Ib.*



Than he who has his bargain made,  
And legally his cash convey'd,  
Shall e'er his pocket reimburse  
By diving in a Lawyer's Purse.

## LECTURE VIII.

*Memoirs continued—MR. S \* R \* B \* T \* R is called to the Bar—Goes the Circuit—The Character of MR. JOSEPH FERRET, a Country Attorney—Subject resumed—Instructions in the Art of SPECIAL PLEADING—Messrs. JOHN DOE and RICHARD ROE—Conclusion of the first Book.*

THUS in my saddle I was seated,  
Ere scarce one *Lustrum* was completed,  
But when my Mental Powers I weigh'd,  
My figure and my mien survey'd,  
A bold Causidical appearance,  
Strong nerves, strong parts, and perseverance,  
Far nobler views inspir'd my mind,  
It seem'd that nature had combin'd  
“An eye to threaten and command,”  
And brows no mortal could withstand,

With lungs of *Æolus* and *Stentor*,  
For some great purpose peradventure,  
There is, I cried, (and dropp'd my Pen,)  
“A tide in the affairs of men,”  
Which leads to fame and fortune those,  
Who take it while the current flows:  
There is, ye Gods, there is a Crisis!  
I'll seize it, whatsoe'er the price is:  
PROZER was dead, and Serjeant QUIRKIT  
Grew husky, and had left the Circuit,  
And as for SHARK's friend SHOVELNOSE,  
We long had deem'd him meat for crows;  
I scorn'd in this dull scene to tarry,  
Essay'd at once a loftier Quarry,  
At once indulg'd my fav'rite bias,  
And stamp'd my fame at *Nisi prius*:  
So now I take my brace of nags,  
My Note-book, Clerk, and Saddle-bags,

And saunt'ring gently on my Journey,  
Look out for some good rich Attorney,  
One that's a Judge of parts and merit, }  
Such as that choice discerning Spirit, }  
My worthy little friend JOE FERRET, }  
That honest, free, good-natur'd Soul,  
Who stands so high upon the Roll,  
And fills with such *eclat* and grace,  
That pretty comfortable place,  
He gain'd by Government Connexions,  
And prudent conduct at Elections,  
By making Ministerial bounty  
Pass for his own throughout the County:  
A friend to all who are oppress'd,  
And seek by Law to be redress'd,  
One that abhors all compositions,  
All mean <sup>1</sup> *Retraxits*, and *Submissions*,

---

<sup>1</sup> *Retraxits*—A *Retraxit* is a withdrawing of the

Scorns <sup>a</sup> *Arbitrations* as a stain

To *ninth* and *tenth* of WILLIAM'S Reign,

---

suit by the Plaintiff, and is so termed from the most effective word in the old Latin Entry.—A *Retraxit* differs from a *Nonsuit* in this respect—a *Retraxit* must be by the Plaintiff's Appearance, and personally withdrawing his Suit—a *Nonsuit* is effected by the Plaintiff's non-appearance upon being called. In the first, the Plaintiff voluntarily *retracts* his pretensions to sustain the Suit, which operates as a perpetual Bar to any subsequent Action for the like Cause—a *Nonsuit* is only an abandonment of the Suit *Pro hac Vice*.

<sup>a</sup> *Arbitrations*—By the 9th and 10th W. III. c. 15, it is enacted, That Merchants, Traders, and all persons desiring to end their controversies by Arbitration, may agree that their *submission* of their Suit to the Award or Umpirage of any person or persons should be made a rule of any of his Majesty's Courts of Record; and in case of disobedience to such Award or Umpirage, the parties neglecting or refusing to perform the same, shall be subject to all the Penalties of contemning a Rule of Court.

Acts, which he deems mislead his Clients,  
Cramp Genius, and degrade the Science;  
But when the sparks of discord rise,  
Should Parties wish to compromise,  
My little Friend provokes the flame,  
Encourages and spreads the same,  
And with such zeal and judgment blows  
The coals of strife 'twixt friends and foes,  
He ne'er can fail at 'size or session,  
Of growing *warm* by his Profession;  
His Garden's neat, the Messuage good,  
The best in all the neighbourhood,  
With door Chinese the front is grac'd,  
His windows are of Gothic taste,  
The which, to me, though all the Village  
Conceive they're got by fraud and pillage,  
And both th' Exciseman and the Rector  
Despise his taste in architecture,

To me, whose taste is less refin'd,  
And more to social joys inclin'd,  
If chance my penetrating eye  
His glitt'ring neat buffet descry,  
A goodly symptom ! and behold  
His well scour'd knocker shine like Gold,  
Look all so pretty and inviting,  
I make no scruple of alighting ;  
At said Attorney's fix my quarters,  
Flatter and flirt with all his Daughters,  
With KITTY FERRET dance Cotillions—  
While you, ye worthy rum Civilians,  
Ye sober persevering Stagers,  
Hammer your <sup>3</sup> *minors* and your *majors*,

---

<sup>3</sup> *Minors*—The *Major* Excommunication separates those on whom it is inflicted, not only from the Mystical Body of the Church, and from Spiritual Com-

And lapt in smoke, and vapours dank,  
Pore over LINWOOD and LANFRANC.—

But soft, awhile, methinks dear JOB,  
Our Brethren of the Scarlet Robe,  
Lull'd by the music of my numbers,  
Seem to resume their wonted Slumbers ;  
Good MERCURY, with caution tread,  
And MORPHEUS wave thy Wand of Lead ;  
While they enjoy their meditations,  
We'scape their Excommunications.

---

munion, but also from the society of the faithful ; the *Minor*, or lesser Excommunication, separates only from the passive Communion or receiving of the sacrament. —These may be inflicted by sentence of the Ecclesiastical Judge—Vid. *Linwood de Senten. Excom. C. Ult. Gloss. Wesembecy and Lanfranc*—Authorities greatly relied on in matters of spiritual Cognizance, and the practice of the Ecclesiastical Courts.



Meanwhile do thou the *\*Tale declare*,  
Meet weapons of offence prepare,  
Open your budget of Resources,  
Muster your powers, collect your forces,  
The Truth, and all the Truth, discover,  
And add such flourishes moreover,  
Such aggravations, and additions,  
Embellishments, and repetitions,  
As youthful Fancy oft begets  
On some young SPECIAL PLEADER's wits,  
Which serve like notes of Commentators,  
Or speeches of confus'd Debaters,  
To puzzle e'en by Explanation,  
And darken by Elucidation,

---

*\* Tale*—The Tale or Narration contains the Story of the Plaintiff's Case, and is more commonly called the *Declaration*.

For puzzling oft becomes your duty,  
And makes Obscurity a beauty;  
And trust me, 'tis of wond'rous use  
By Nonsense to improve Abuse,  
As I, thank Heaven, so oft have done,  
And worthily my race have run.

Then let us pray for writ of <sup>s</sup> PONE,  
JOHN DOE and RICHARD ROE his Crony,  
Good men and true, who never fail  
The needy and distress'd to bail,  
Direct unseen the dire dispute,  
And pledge their names in ev'ry suit—

---

<sup>s</sup> PONE—The PONE is the Writ of *Attachment* beforementioned; it is so called from the words of the Writ, *Pone per vadium et salvos plegios*, "*Put by Gage and safe Pledges.* A. B."

John Doe and Richard Roe.

Sure 'tis not all a vain delusion,  
Romance, and fable <sup>6</sup> Rosicrusian,  
That Spirits do exist *without*,  
Haunt us, and watch our *whereabout* ;  
Witness ye visionary pair,  
Ye floating forms that, light as air,  
Dwell in some SPECIAL PLEADER's brain ;  
Am I deceiv'd ? or are ye twain  
The restless and perturbed Sprites,  
The manes of departed Knights,  
Erst of the Post ? whose frauds and lies,  
False Pleas, false Oaths, and *Alibis*,  
Raised ye in Life above your Peers,  
And launch'd ye tow'ards the starry Spheres,  
Then to those mansions, " unanneal'd,"  
Where unrepented sins are seal'd :

---

<sup>6</sup> *Rosicrusian*—For an account of the Theory of the Rosicrusian system, see Pope's Rape of the Lock.

Say, wherefore in your days of flesh  
Cut off, while yet your sins were fresh,  
Ye visit thus the realms of Day,  
Shaking with fear our frames of Clay,  
Still doom'd in penal Ink to linger,  
And hover round a Pleader's finger,  
Or on a Writ impal'd, and wedg'd  
For Plaintiff's Prosecution pledg'd,  
Aid and abett the purpos'd ill,  
And works of Enmity fulfil,  
Still doom'd to hitch in Declaration,  
And drive your ancient Occupation?  
While thus to you I raise my Voice,  
Methinks I see the Ghosts rejoice  
Of Lawyers erst in Fiction bold,  
LEVINZ and LUTWYCHE, Pleaders old,  
With Writs and Entries round him spread,  
See plodding SAUNDERS rears his head,

Lo ! VENTRIS wakes ! before mine eyes  
BROWN, LILLY, and BOHUN arise !  
Each in his Parchment shroud appears,  
Some with their Quills behind their ears,  
Flourish their velvet Caps on high,  
Some wave their grizzel wigs, and cry  
Hail happy Pair ! the Glory and the Boast,  
The Strength and Bulwark of the legal Host,  
Like <sup>7</sup> SAUL and JONATHAN in Friendship  
    tried,  
Pleasant ye lived, and undivided died !  
While Pillories shall yawn, where erst ye  
    stood,  
And brav'd the torrent of o'erwhelming  
    mud,

---

<sup>7</sup> *Saul*—"Saul and Jonathan were pleasant in their  
Lives, and in their Death they were not divided." 2d  
*Samuel*, c. 1, v. 23.

While gaming Peers, and <sup>8</sup> Dames of noble  
Race,

Shall strive to merit that exalted Place;

While righteous Scriv'ners, who when  
Sunday shines,

Pore o'er their Bills, and turn their noughts  
to nines,

(Their unpaid Bills, which long have  
learn'd to grow

Faster than Poplars on the Banks of Po,)

---

<sup>8</sup> *Dames*—The Author in this passage seems to have contemplated the probability of certain Characters of both Sexes in the fashionable World, exhibiting their Persons in the Pillory for keeping public Gaming Tables. It is written in the true Spirit of Prophecy; and from a late Declaration of a learned and noble Judge, (no less distinguished for his impartial and independent Spirit, than for his great zeal and earnestness for Justice) the EDITOR very sincerely hopes Mr. S.'s Prophecy will be shortly fulfilled.

Freely shall lend their charitable aid,  
To young Professors of the gambling trade;  
While Writs shall last, and Usury shall  
thrive,

• Your name, your honour, and your praise  
shall live :

Jailors shall smile, and with Bum-bailiffs  
raise

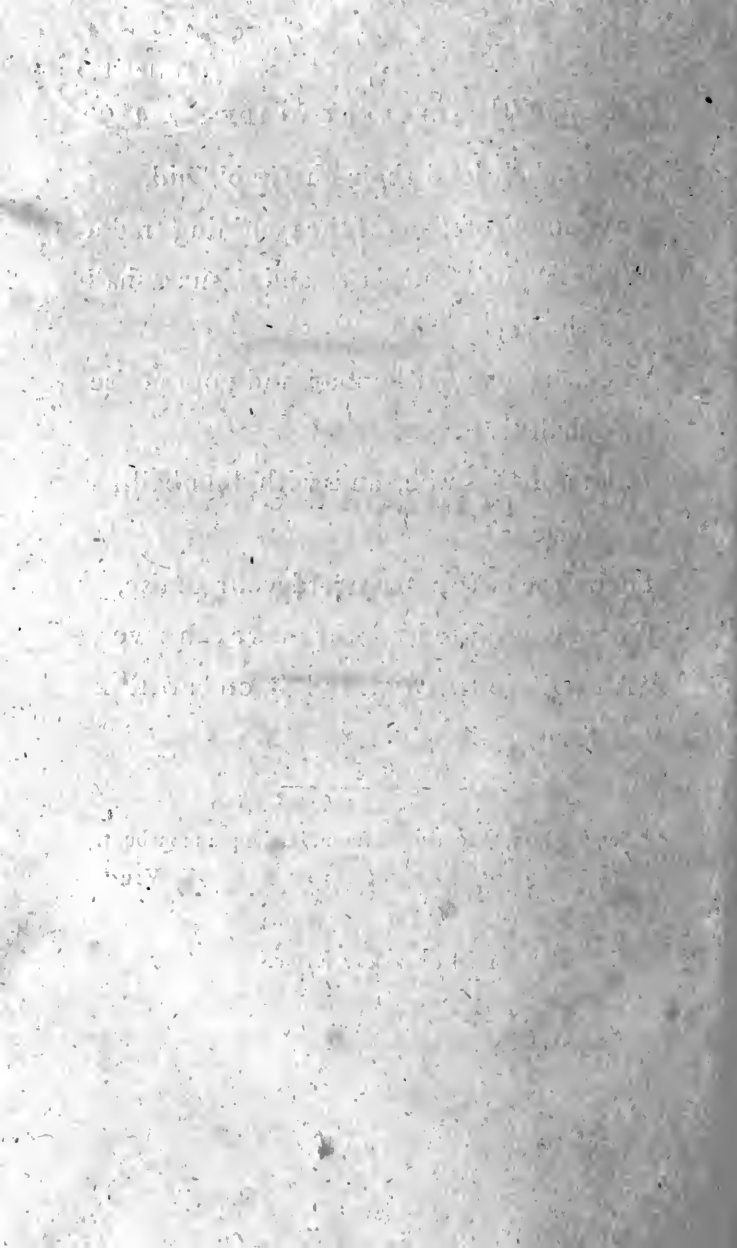
Their iron voices to record your Praise,  
Whom Law united, nor the grave can sever,  
“All hail JOHN DOE, and RICHARD ROE  
for ever.”

---

• Semper honos, nomenque tuum, laudesque manebunt.

VIRG.

END OF FIRST PART.



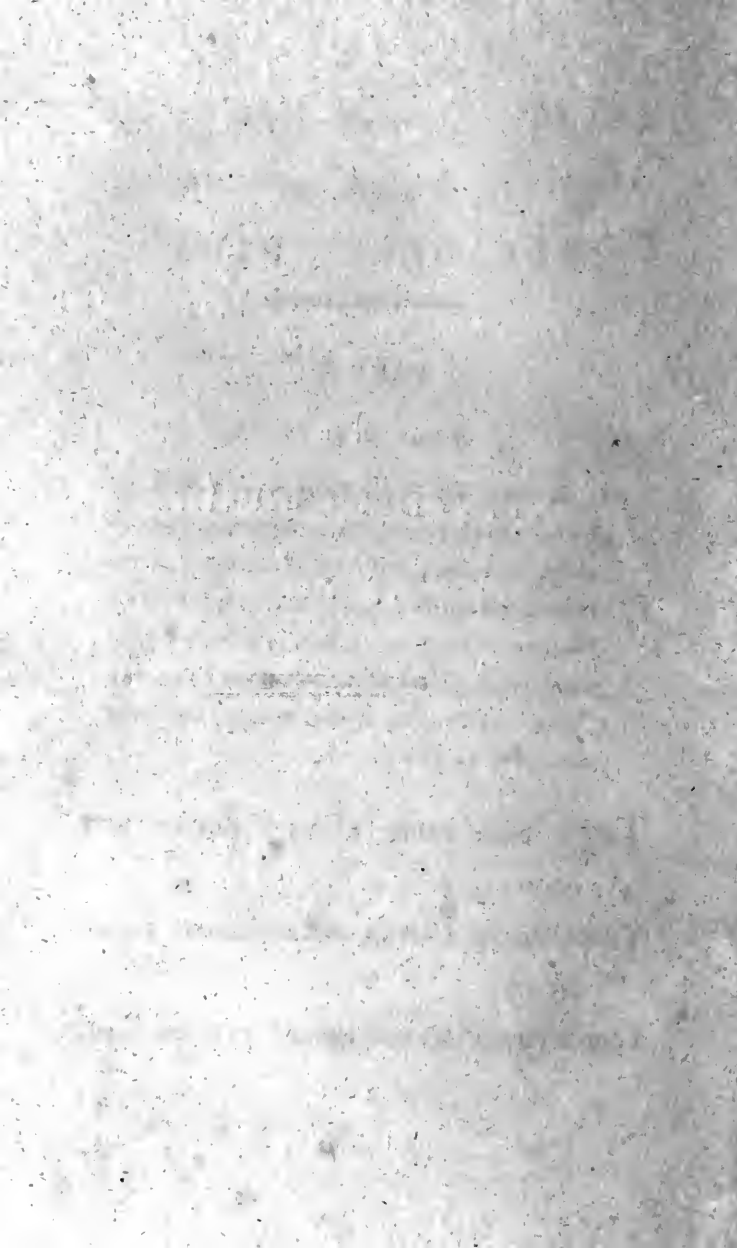


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THE  
PLEADER'S GUIDE.

PART II.

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THE  
PLEADER'S GUIDE.

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PART II.

LECTURE I.

MR. S. *having finished the PROCESS of a SUIT AT LAW, opens the present Discourse with the PLEADINGS, containing a Poetical Explanation of the Composition and Structurc of the RECORD from the PROCESS to the POSTEA, illustrated with Professional Traits of the Character of the late THOMAS TEWKESBURY, Esq. Special Pleader, with some Account of his Death.*

THEN once more, O ye Pleaders, and  
once more  
Ye plodding Clerks, with fingers never  
weary,  
I come your Pleas and Pleadings to explore,

And through the confines of your cloisters  
dreary,

Following the PROCESS 'bove th' Aonian  
steep,

I have presum'd with inky thumbs to sweep  
The ' golden Lyre ; nor yet the more have  
' ceas'd

---

' ——— Yet not the more

Cease I to wander where the Muses haunt

Clear spring or shady grove, &c.

---

' *Golden Lyre*—Sir John Fortescue observes, “ that  
“ the University of the Laws (for so he calls the Inns  
of Court and Chancery) did not only study the Laws to  
“ serve the Courts of Justice, but did further learn to  
“ *dance and to sing, and to play on instruments* on the  
“ Ferial days.” *Dugd. Orig. Juridic. c. 55. Fortescue*  
*de Laud. Leg. Ang. c. 49.* Mr. S. seems to have acted

To greet <sup>2</sup>*St. MICHAEL the Archangel's*  
feast,

Nor still sometimes upon <sup>3</sup>*St. MARTIN's*  
morn

<sup>4</sup>*Thro' Inner* and thro' *Middle* TEMPLE  
borne,

---

<sup>b</sup> Thro' inner and thro' middle darkness borne.

MILTON.

---

up to the spirit of the original institution, see the Memoirs of his professional Career, *Part I. Lect. VII.*

<sup>2</sup> *St. Michael the Archangel*—The Law Terms respectively derive their names from the Festivals of the Church, immediately preceding their commencement. *Michaelmas Term* originally commenced in eight days after the feast of Saint Michael inclusive, *Octabus St. Michaelis*; but by the joint operation of two Acts of Parliament, and the alteration of Style, it has in effect, been procrastinated, so as not to commence before the 6th of November.

<sup>3</sup> *Saint Martin*—*Crastino Sti Martini*, “the morrow

(While yet detain'd in that obscure resort)  
 Cease I to roam through *Elm* or *Garden*  
*Court*,  
*Fig-Tree* or *Fountain Side*, or learned shade  
 Of *King's-Bench Walks*, by Pleadings vocal  
 made—

---

of St. Martin," the 12th day of November, formerly the fourth, now the second return day of Michaelmas Term.

<sup>4</sup> *Elm, or Garden Court*—"The Inns of Court were "placed out of the City and noise thereof in the "suburbs of London. *Seorsum parumper in Civitatis "Suburbio.*" Fortescue. The several Courts in the Temple, have been erected at different periods upon the scite of the Gardens and Pleasure Grounds belonging to the *Hostel*, or *domus mansionalis* of the Temple, granted originally upon lease to Sir Julius Cæsar and others.

Thrice hallow'd shades ! where slip-shod  
    Benchers muse,  
Attorneys haunt, and Special Pleader's  
    cruise !

Melodious as Apollo's Lute  
Is the soft language of a Suit,  
The <sup>5</sup> *Writ*, how sweet !. the <sup>6</sup> *Declaration*,  
The <sup>7</sup> *Double Plea*, the <sup>8</sup> *Replication* !

---

<sup>5</sup> *Writ*—The Writ here celebrated, is the Original writ, see *Part I. Lect. IV.*

<sup>6</sup> *Declaration*—or *Tale* containing the story of the Plaintiff's Case, see *Part I. Lect. VIII.*

<sup>7</sup> *Double Plea*—A Plea is the Defendant's answer to the Plaintiff's declaration, and is either general or special. A *Double Plea*, is in the nature of two distinct answers to the Plaintiff's allegation : originally it was required that every Plea should be certain and single. A *Double Plea* was not allowed to be good, nor the

Persuasive as the accents sweet,  
 Which \* captive held the Grecian fleet,  
 Or His, that vocal Bard of Thrace  
 Whose music tam'd a savage race:  
 Replete with all the beauties chaste  
 Of Attic and Augustan taste:

---

\* *Accents sweet*—Sirenum voces et Circes pocula  
 nosti. HOR.

---

Defendant permitted to plead two distinct matters, till the 4th and 5th Ann, c. 16, by which Statute the Defendant is allowed to make the most of his case, by pleading, with the leave of the Court first had and obtained, (which form of words is uniformly so expressed in the Plea,) as many distinct matters as may be advisable and necessary to his defence. This wholesome Statute may be considered as the Foster-Father of all Special Pleading.

\* *Replication*—Is the Plaintiff's answer, or exception to the Defendant's Plea.



The which do most in ancient writ

Delight to live, *videlicet*—

“<sup>9</sup> GEORGE \* \* \* \* \*

“*To the Shrieve of \* \* \* \* \* greeting,*

“*Whereas, <sup>10</sup> JOHN DOE himself secreting,*

“*Your Bailiwick runs up and down,*

“*We do command you thereupon*

“*(Sicut alias) that you bring*

“*His body 'fore our Lord the King,*

“*And have you this writ then and there,*

“*Witness \* \* at Westminster.*”

---

<sup>9</sup> GEORGE, &c.—The sketch of an *alias latitat* is here given, *e. g.* but for the praise of this admirable writ, the extent of its powers, &c. &c. see *ante*, Part I. Lect. V. and in notes.

<sup>10</sup> *John Doe*—See Part I. Lect. VIII. page 94, and notes.

Now, 'tis not every one can see  
That beautiful simplicity,  
Which in this "*Precept* meets the ear,  
So forcible, distinct, and clear,  
And gives beyond the reach of art  
Such strong emotions to the heart,—  
These magic forms of Writs and Entries,  
Still charm the shades of Coke and Ventris:  
No harsh, no unharmonious sound  
Is in the Record to be found :  
Fiction is ours, and Fancy too,  
Imagination ever new,  
And many a Quirk, and many a bout  
" Of linked sweetness long drawn out."

---

<sup>11</sup> *Precept*—The Writs directed to the Sheriff are legally termed *Precepts*, from their operative word *Præcipimus*, " we do command you."

“With wanton heed and giddy cunning,”  
The half-drown’d sense thro’ mazes running  
Of varied *Counts*, whose forms supply  
Fresh food for Mirth and Pleasantry;  
But what with more substantial charms  
Our spirits cheers, our genius warms,  
To aid us in our legal toils,  
We claim the Hero’s glittering spoils;  
Ours is the meed, which all must pay,  
Whether they win, or lose the day:  
“In lively portraiture display’d,”  
And gently on our tables laid,  
We view the countenances bright  
Of Kings and Queens; a goodly sight!  
Which even Jacobins adore,  
Impress’d upon the golden ore:  
O may they oft in bright array,  
On *Me* their gracious smiles display!

Oft may their precious forms unite,  
Meet emblems of the SOVEREIGN'S *Right*,  
At once t' inspirit and surprise,  
To dazzle and enchant mine eyes ;  
With music charm my ravish'd ears,  
Harmonious as the vocal Spheres,  
And join like Cymbals when they meet  
In joyful *chinks* and *numbers* sweet !—  
Inspir'd with Images like these  
Old <sup>12</sup> Tewkesbury perus'd his Pleas,  
Though his I deem'd an Inspiration,  
Which savour'd much of Fascination,  
And caus'd such bodily exertion  
As gave his friends no small diversion :

---

<sup>12</sup> *Tewkesbury*—The late Thomas Tewkesbury, Esq. see the Episode, containing authentic memoirs of the Author's professional career. *Part I. Lect. VII.*

For oft I've mark'd him when He chose  
<sup>15</sup> *Special Demurrers* to compose,  
With genuine **Old Black Letter** fraught,  
Grow quite transported with the thought,  
His thumbs he'd mumble to the quick,  
His shins against the table kick,  
Then give his rueful Wig to fly  
Athwart the room in Ecstasy,  
Till Clients, and the sound of Fees  
Arous'd him from his Reveries,

---

<sup>13</sup> *Special Demurrers*—A Demurrer is an issue in matter of Law, and a *Special Demurrer* is such a demurrer to the form and manner of Pleading, as by the Statute 27th *Eliz.* c. 5, and 4th and 5th *Ann.* c. 16, is required to be set out specially, with all the causes and reasons wherein the deficiency, or incompetency in Pleading consists.

And soon as "HAWK or HERNE appear'd,  
He'd rub his hands and stroke his beard,  
Resume his old colloquial turn,

"With how d'ye do, good Mr. HERNE?—

"Hah! Mr. HAWK, is't you, I say,

"And how does Mrs. HAWK, I pray?

"And all the little HAWKS to-day?

"What news is stirring in the Trade?

"Have all those damages been paid

"By Dr. Hemlock, for the Kick

"He gave to Dr. ARSENIC?—

"Still quarrelling about their Pills!

"Pray have their patients made their wills?

"How goes the GULL and GUDGEON Cause?

"I see you've got 'em in your claws,

---

<sup>14</sup> "Hawk or Herne"—See the Episode, *Part I.*  
*Lect. VII.*

“ You’ve pounc’d ’em, HAWK, you’ll pluck  
’em too,—

“ Pretty good sport for HERNE and you!”—

Such parly would his wits restore,

And TOM became himself once more.

Blest Sage ! who could his mind unbend,

Yet had a soul to comprehend

Those subtle mysteries sublime,

Snatch’d from the mould’ring hand of time

By skilful Draftsmen to impart

Choice beauties to the Pleading art ;

He, in the twinkling of an eye,

Could all the scatter’d charms descry

Of <sup>15</sup> *Horsepleas*, <sup>16</sup> *traverses*, *demurrers*,

<sup>17</sup> *Jeofails*, <sup>18</sup> *imparlances*, and *Errors*,

---

<sup>15</sup> *Horsepleas*—A description of Special Pleas adapted  
to the purposes of delay, whimsically so called, and

<sup>19</sup> *Averments*, <sup>20</sup> *Bars*, and <sup>21</sup> *Protestandos*,  
And <sup>22</sup> *puis D'arreign continuandos*,

---

familiar in practice, adopted in particular cases, as a means of gaining time, and *Jockeying* the Defendant over the term.

<sup>16</sup> “*Traverses*”—A Traverse in Pleading, is a formal denial of some matter or thing alleged by the adverse party, by the words “*Sans Ceo*,” in Law French, “*absque hoc*,” in Latin, and as now expressed in English, “*without this that*,” which words are scrupulously preserved as the common form of a Traverse in Pleading. The use of it is to answer the Issue tendered *categorically*; for though the Special Plea may contain such a specification of the Defendant's Case, or such a Justification as amounts in substance, or by necessary inference, to a denial, it is not that positive and direct negative to the affirmative pretended by the adverse party, as the Law requires, to constitute a triable Issue.

<sup>17</sup> “*Jeofails*”—Are such errors and oversights in Pleading, as formerly, at any time before judgment,



Of every *Count* and term could tell,  
And words of uncouth form compel,

---

either party might have amended by an application to the Court, with a confession in the usual form of the Law French *Jeo faillé*, "I have erred." But as frequent errors occasioned frequent confessions and applications of this sort, and much unnecessary delay in the conduct of a Suit, the Statutes, from thence called the Statutes of *Jeofail*, were enacted to cure such Errors and Defects in Pleading, without a special application to the Court. In point of Practice where these errors are within the Statutes, they are virtually remedied by being at once overlooked by the Court.

<sup>18</sup> "*Imparlances*"—An *imparlance*, from the French *imparler*, was at common Law an indulgence of time to the parties to enable them to *talk together*, and try to make up their differences, supposed to originate in the Evangelical Principle of "*agree with thine adversary quickly, while thou art in the way with him.*" The *Imparlance*, or *licentia interloquendi*, is generally to the next Term, and has the effect of giving the Defendant

(Such as could ne'er have had existence,  
Or met without his kind assistance,)

---

time to plead; but by a Rule in the K. B. *Trin.* 5th Geo. II. *imparlances* are limited at the discretion of the Court, and made to depend upon the return of the Writ, or delivery of the Declaration, and are usually granted upon a Judge's order, under certain conditions, such as pleading issuably, taking short notice of Trial, except in Country Causes, which may admit of time for the Plaintiff to make up his Record, and give proper notice of Trial at the Assizes.

<sup>19</sup> "*Averments*"—An *averment* is the form of concluding a Plea by a *verification*, and is used where any affirmative matter is pleaded by Defendant in bar of Plaintiff's action. The form of words is invariably, "*and this he is ready to verify.*" *Averer*, "to aver," Law French.

<sup>20</sup> "*Bars*"—*Barræ*, or Pleas in Bar, go directly to the right in demand, and are either peremptory and

To keep due pace in Declaration,  
With studied grace and variation :

---

perpetual, as "*a general Release*," "*within age*," "*son assault*," and the Pleas grounded on the Statutes of Limitation; or they are temporary, as *plene administravit*, "*fully administered*," which is a good Plea till more *assets*, or goods sufficient to answer the demand, shall come to the executor's hands.

<sup>21</sup> "*Protestandos*," *Protestation*,"—The *Gerund* was emphatically used in Pleading, and the words "*by Protestation*," are still strictly continued, in order to exclude such an inference as might otherwise result, and amount to an admission of fact. It is defined by Plowden in *Grayslake* and *Fox's Case*, a saving, or "*exclusion of a conclusion*." Plowd. fol. 276. Cok. Lit. 124.

<sup>22</sup> *Puis d'arreign continuandos*—Are a kind of supplementary Pleas, to which the party becomes entitled from some new matter arising after plea pleaded, which

While every man of sense beside him  
Conceiv'd 'twas *aliud et idem*.—

Alas ! poor TEWKESBURY ! the smell  
Of ancient Parchment pleas'd thee well !  
But thou art gone ! and may'st thou gain  
That Peace thy Clients sought in vain :  
'Twas hard no <sup>23</sup> *dilatory Plea*;  
Of power to keep the Body free,

---

will avoid the action. This Plea may be pleaded any time after Issue joined, and before Verdict.

<sup>23</sup> “ *Dilatory Plea*”—Dilatory Pleas, are calculated to create a Temporary Delay, or suspension of the Suit, and are such as either bring into question the Jurisdiction of the Court, the legal ability of the Plaintiff to bring the suit, or are in *abatement*, as it is called, of the Writ, and complaint, from the misnaming of the Defendant, or the death of either party.

Thine <sup>24</sup> *issuable term* could save ;  
That CLOTHO no *imparlance* gave ;  
Nor would the Fates *estop* their task,  
To help thee over <sup>25</sup> *Quinden' Pasch* ;  
But seiz'd at once the abhorred Sheers,  
And cut the red tape of thy years ;  
And still the fatal Sisters hold  
The *Issues of thy life* enroll'd,  
Remov'd for ever in the last resort  
By <sup>26</sup> *Writ of Error* into Pluto's Court.

---

<sup>24</sup> "*Issuable Term*"—The Issuable Terms are Hilary and Trinity, and are so called, because in them the Issues are joined, and records made up of course to be tried at the Assizes which immediately follow.

<sup>25</sup> "*Quinden' Pasch*"—The fifteenth day inclusive after Easter, being the first Return Day of Easter Term.

<sup>26</sup> "*Writ of Error*"—"Is a commission to Judges

What mortal sins he had, Tom died assur'd  
Would by the Statutes of *Jeofail* be cur'd,  
And for his virtues of the higher class  
They'd stand recorded in congenial brass:  
So bow'd obedience to Fate's just *decrees*,  
But first <sup>27</sup> *crav'd Oyer* of his book of  
Fees;

---

“ of a superior Court, by which they are authorised to  
“ examine the Record of the Judgment given in an  
“ inferior Court, and on such examination to affirm or  
“ or reverse the same.” *Jenk. Rep.* 25. 2 *Inst.* The  
Writ of Error lies from any Court of Record, having  
power to hold Plea of Trespass or Debt above forty  
shillings. *Fitz. Nat. Br. fol.* 20.

<sup>27</sup> “ *Crav'd oyer*,”—The “ *craving oyer*” of a Writ  
or Deed in pleading, has arisen in practice from the  
ignorance and simplicity of Defendants in ancient  
times, who were supposed incapable of reading it them-  
selves.

Strove to protract each moment as it past,  
And talk'd of <sup>28</sup> POSTEAS till he breath'd  
his last.

---

<sup>28</sup> "*Posteas*"—The *Postea* contains the *Proceedings* before the Judge at the trial. The word "*afterwards*" serving to continue the Record of the Trial and Judgment, and is indorsed on the back of the *Nisi-prius* Record.

## LECTURE II.

*On the Absurdity of legal INNOVATIONS—Of  
References and Arbitrations—A JUSTICE  
OF THE PEACE—his Judicial consequence  
in the Eye of the Law——The great advan-  
tages resulting from the multiplication of  
Law Offices, and the perplexity of legal Pro-  
ceedings.*

WISE was the man who first projected  
The LEVER, and its use directed,  
And bold th' adventurous Engineer  
Who swore he would the Earth unsphere,  
And move the Firmament to boot,  
Give him but where to set his foot.—  
Yet will I hold, a Lawyer fee'd is,  
Abler by far than ARCHIMEDES,



Give him a WRIT, a <sup>1</sup> CAPIAS put in,  
Or <sup>2</sup> LATITAT by way of footing,  
And, on the credit of a Bard,  
He'll move the Devil afterward :—  
Yet there are Lawyers to be found  
For learning and for worth renown'd,  
Who by a summary proceeding  
Wish to <sup>3</sup> abate all Special Pleading,  
*Join general Issue, and dispense*  
*The Special facts in Evidence,*

---

<sup>1</sup> “*Capias*,” <sup>2</sup> “*Latitat*”—See a more particular account of these writs in the History of the Process, contained in the first Part of these Lectures. *Lect. V.* p. 50 and 52, and in notes.

<sup>3</sup> “*Abate*”—From the French word “*abattre*,” to defeat or put down. The word in legal acceptation, is generally applied to a nuisance.

Or bring the parties to accord  
By Arbitration and Award ;  
This doctrine too, without *demurring*,  
Their Clients might perhaps concur in,  
And since a more compendious way  
So far exceeds the Law's delay,  
Might beg some Justice of the Quorum,  
At once to lay the Law before 'em ;  
And thus all matters of Account,  
Whate'er their nature and amount,  
All <sup>4</sup> *Actions on the Case*, <sup>5</sup> *in Trover*,  
*'Detinue*, or in *'Debt*, make over

---

<sup>4</sup> "*Actions on the Case*"—The Action of Trespass on the Case, is the universal remedy for all injuries unaccompanied with force ; in such cases, the Party injured, is allowed both by Common Law and the Statute of Westminster, 2d. c. 24, to bring a Special Action

To some grave Magistrate, of sense,  
Of knowledge, weight, and consequence,

---

by a writ adapted to the peculiar circumstances of his own particular grievance. *Black. Com. Vol. III.* 123.

<sup>5</sup> "*Trover*"—*Trover and Conversion*, is a special action on the Case to recover the value of goods or money in the possession of another, and unjustly detained from the right owner, who, in the form in which this action is conceived, suggests, what is in general unfounded in fact, viz. that he *lost* them, and that defendant *found* them, and *converted* them to his own use. The *conversion* is the Gist of the Action, and the only fact necessary to be proved; the losing and finding being a mere fiction, perfectly immaterial to the Issue.

<sup>6</sup> "*Detinue*"—The Action of *Detinue* at common law, lies for the recovery of the identical thing wrongfully detained, whereas by *Trover*, the value only in damages of the thing detained, and not the thing itself

Who of his *Dedimus* possest  
As one with inspiration blest,  
Enjoys the happiest transition  
From Ignorance, to Erudition,  
And with no other stock in trade  
Than Testament on table laid,

---

is recoverable. The action of *Trover and Conversion* being a special action on the Case, and of universal application, has been found more extensively beneficial to the party injured than the action of *Detinue*, and has accordingly, in a great measure, superseded the use of it.

7 *Debt*—DEBT, in Law, signifies a *certain* sum due and owing from one man to another, as a sum due on *Specialty*, e. g. specified in a bond or other deed, but not an *uncertain* sum; wherefore, action of DEBT simply, will not lie for a Tradesman's Bill, where the precise sum has not been previously contracted for. The proper action in such Case, being, what is termed, an "*Indebitatus assumpsit*."

With acts 'gainst *tunneling and snaring*,  
And JOHN the Evidence to swear in,  
JOHN Groom, who leaves his Worship's horse  
Unfed, to put the Laws in force,  
And three old Folios on a shelf,  
A 'Court of RECORD is HIMSELF.—

---

\* "*A Court of Record is Himself*"—A Justice of the Peace, by virtue of his Commission, has power to take recognizances of the Peace, and from that capacity he is said to be a Justice of *Record*, none but Justices of *Record* having authority to take recognizances; by the same power, as a *Conservator of the Peace*, he has authority to act *divisim*, as well as *conjunctim*, and may do all acts concerning his office "*apart and by himself*." *Lamb. Inst.* 385. *Jenk.* 174. The highest point of his authority seems to be to record a forcible Entry on his own possession, *Wood's Inst.* 81, from which it should seem that he is not only "*a Court of Record himself*," but also, in this particular instance, and to a certain degree at least, a Judge in his own Cause.

Alas ! how little do they know  
What blessings from Confusion flow !  
What a Revenue to the State  
Error and Ignorance create,

---

Considering the vast power thus given to Justices by their Commission, and the great burthen and accumulation of business, heaped upon them by a variety of successive Acts of Parliament ; a power, which as Mr. Justice *Blackstone* observes, “ even in the hands of men “ of honour, is highly formidable,” and a burthen so great, “ that gentlemen of rank and fortune are often “ discouraged from acting in the Commission.” Is it to be wondered if that power is in some few instances “ prostituted to mean and scandalous purposes, and “ the trust when slighted by gentlemen, falls into the “ hands of those who are not so ?” The learned Judge adds with great truth and propriety, that “ the country “ is greatly obliged to any gentleman of figure, who “ will undertake to perform that Duty which in consequence of his rank in life, he owes more particularly “ to his Country.”

By what we Lawyers most abound in,  
THE ART OF PUZZLING AND CONFOUNDING!  
From Ignorance a Pleader gains  
Fresh matter to employ his brains,  
Errors on Errors rise, and thus  
As Doctors say, *⁹ pus creat pus*,  
One Suit another Suit succeeds,  
And Damage upon Damage breeds,  
If Law is as a Rule of Right,  
And all things must be measur'd by't,  
There must be Lawyers to provide it,  
And some to move, and some to guide it;  
*Item*, there must be stock or stone,  
Or senseless block to work upon,  
A Rule of Action, unemploy'd,  
Had better far be null and void,

---

*⁹* " *Pus creat pus*" — Matter creates matter.

But Law, like Nature, to sustain  
Her system, <sup>10</sup> *never acts in vain*,  
Though all that system may comprise,  
Is dimly seen by vulgar eyes ;  
Observe the Animal Creation,  
Each class in due subordination,  
What nice dependencies you see in  
The chain of Universal Being,  
From Elephant of BISNAGAR,  
Who bears its armed Hosts to war,  
Down to the noxious worm that feeds  
On slime, and in corruption breeds :  
Howe'er imperfect human sight,  
All Knowledge partial and finite,  
This truth still vibrates on the chain  
That Nature *never acts in vain*—

---

<sup>10</sup> “ *Never acts in vain* ”—Natura nihil agit frustra.



Fowls of the air, and beasts, like men  
Prey, and are prey'd upon again ;  
And if the lower class expire,  
Their loss proves fatal to the higher—  
Mark thus in Law the nice gradations.  
Of useful Posts and occupations,  
Of all, for money who engage in't,  
From BUZZARD to the meanest Agent,  
All labour in their just vocation,  
And each, by kind procrastination,  
As one good turn deserves another,  
Multiplies business for his brother.

## LECTURE III.

*On MISPRISIONS in Practice, contrasted with  
the Professional Exploits and exemplary Con-  
duct of MESSRS. HAWK, SHARK, and other  
distinguished Characters.*

THEN woe to him who would devise  
Pacific schemes of compromise;  
Perish the man who dares control  
That generous ardour of the soul,  
That noble, that ingenuous heat  
Which prompts the truly brave and great,  
To seek an adversary's ruin,  
Though purchas'd by his own undoing.  
May the fat weed of Lethe shed  
Its dullness o'er His recreant head,  
Whoe'er has wilfully supprest  
That passion in his Client's breast!

May he, in self-condemning mood,  
 For lack of more substantial food,  
<sup>a</sup> *Eat his own soul* ; as erst we find  
 Th' ill-fated Son of Glaucus din'd ;  
 Give him of Hellebore to drink ;—  
 Wash him in steep-down Gulfs of Ink ;  
 Immerse him till he cries for quarter,  
 And pound him in a <sup>1</sup> *Turkish mortar* !—

---

<sup>a</sup> ὃν θυμὸν κατέδων.

HOM. ILIAD, Z. 202.

Qui miser in campis mœrens errabat Alæis

Ipse suum Cor edens, hominum Vestigia vitans.

CIC. TUSCUL. QUEST. LIB. 3.

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<sup>1</sup> “ *Turkish mortar* ”—Extraordinary as it may appear, it is a fact not to be doubted, that the Lawyers in Turkey, when sentenced to capital punishment, have the privilege of being pounded to death in a mortar. Baron de Tott in his Memoirs, records an event that happened during his residence at Constantinoplê, which

Oh ! that such false and foolish pride, -  
Should a man's Genius so bestride,  
Arrest his faculties, and mar  
Their Action, like a *Plea in Bar* !  
Is it not marvellous, dear Job,  
So many of the learned Robe,  
Should all those thriving arts despise,  
By which more ardent Spirits rise,  
And court, to their own interest blind,  
The empty praises of mankind ?  
Sure there's a lack of sound discretion,  
In every branch of the Profession ;

---

occasioned the pestles and mortars to be dug up, by the order of Sultan Osman, for the purpose of pounding the refractory Lawyers to death. " This order, the Baron adds, had the desired effect, and the body of the Ulemats were all submission." Baron de Tott's Memoirs, Vol. I.

A plague upon all squeamish Plead-ers,  
Proud Juniors, and fastidious Leaders,  
Humane Attorneys, and all those  
Who seek a quarrel to compose  
Which ably manag'd, and well nourish'd,  
Might soon have taken root and flourish'd,  
And where old BUZZARD would have flung  
Cart loads of good and rotten dung,  
They wilfully pluck up the shoots,  
Young suckers, and old stumps of suits,  
Which, forc'd in Chanc'ry or th' Exchequer,  
To make them vegetate the quicker,  
Might have produc'd by such circuitry  
Fruit equal to a good annuity,  
Choice golden fruit, of taste most rare,  
In form as palpable and fair,  
As that which to the trees attach'd  
Of Hesperus hung dragon-watch'd,

Or that fair fruit so sweet of savour,  
Which EVE complain'd the Serpent gave her,  
Or fairer still from India brought,  
And oft with no less evil fraught,  
Which, fill'd with most delicious juices,  
The fam'd *Pagoda Tree* produces—  
But are such Lawyers sound and staunch,  
Who grub a Cause up root and branch,  
And have the conscience to restrain  
Law-charges, Covin, and Chicane !  
Nay sacrifice their time and ease,  
Then wilfully return their fees !  
Are these true Orthodox Attornies ?  
Are they such men as HAWK or HERNE is !  
Have they that truly *Qui*<sup>2</sup> *tam* Spirit  
Which animates my Friend JOE FERRET ?

---

<sup>2</sup> *Qui tam*—Or the spirit of a common Informer,

Range they in any competition,  
 With men of Mr. SHARK's condition?—  
 All my professional Connexion  
 I owe to Mr. SHARK's protection,  
 He, (while on *special pleading* bent  
 To TEWKESBURY's I daily went)  
 Gave me a general invitation  
 To write for him the long Vacation,

---

who makes it a matter of conscience to inform the Court of all such offences as are committed against penal acts of Parliament, which give one moiety of the Penalty to the Crown, and the other moiety to any one who will sue for the same. The Informer sues in such case as for a Debt, which the Party offending is considered in Law as having incurred the instant the Offence is committed. The Action is therefore vulgarly called "*Qui tam*," because in the form in which it is conceived, the Prosecutor declares that he prosecutes "*as well for our Lord the King, as for himself*;" *tam pro Domino Rege quam pro se ipso*.

'Twas kind, 'twas handsome, I confess,  
I took it, I could do no less,  
And never was there known a Tutor  
In business abler and acuter ;  
'Tis not enough, says he, you're willing  
For ev'ry sheet to take a shilling,  
There's no small virtue you'll discern in  
That wholesome branch of useful Learning,  
By which his cash a Pleader touches,  
And gets the Cause within his clutches ;  
He wish'd, he said, to see me grounded,  
And as with Clients he abounded,  
I went, I wrote, and without scruple  
Became his *extra clerk*, or Pupil ;  
And pardon me, ye men of Pensions,  
And Patents for your rare inventions,  
If, without boasting, I declare  
That during my *manœuvres* there,



More paper I besmear'd with Law,  
Than ever you can make with Straw,  
Or can by Chemic art obtain  
Its native purity again.  
Ye Gods ! what parchment did I soil,  
What Loads of sheepskins did I spoil !  
More, than if fairly put together,  
And turn'd by contract into Leather,  
In Drums and Breeches would sustain  
The labours of a whole Campaign,  
Though not a man of much Black Letter,  
SHARK knew the world, JOB, no man better;  
'Twas a surprise to all who knew him,  
And no small consolation to him,  
To think how many fools he made,  
What service he had done the Trade ;  
He set together by the ears  
Squires, Parsons, Baronets, and Peers ;

And once he made twa Scottish Lairds  
Quarrel and pull each 'other's beards,  
Tho' twa such Lairds were seldom found  
To quarrel much on English ground,  
Still did he fan the vengeful fire,  
Urge and exasperate their Ire;  
With Writs of Error and Appeals  
He goaded these relentless Chiels,  
And made each Combatant sustain  
The conflict like a valiant Thane,  
Gave each his Parchment shield,—“ *then*  
*on, M'Duff,*  
*And damn'd be he who first cries, Hold,*  
*Enough !”*

## LECTURE IV.

*A short Digression, containing a distant Prospect—Mr. S. resumes the Plan of his Lectures—His Instructions for forming the complete Orator at the Bar—Making a Motion in Court—Justifying Bail—Addressing a Jury, &c.*

ALAS ! what ills await the Students  
Who seek to thrive by Jurisprudence !  
How oft the Youth, long doom'd to toil,  
And cultivate that stubborn soil,  
With no kind hand to lead him forth,  
And patronize his modest worth,  
Sees his neglected merits fade,  
And moulders in the cloister'd shade ;  
Doom'd in obscurity to pine  
Without such friendly aid as mine !

How many Geniuses are crost,  
Or 'midst a crowd of Idlers lost,  
Are hunting all their lives to find  
That knowledge they have left behind !  
How many rising men he'll view  
(Whom in their humbler days he knew)  
Who since my Lectures first appear'd,  
Successfully their course have steer'd ;  
Who've learn'd, dear JOB, and practis'd too,  
Those lessons which I meant for you !—  
While He, with wind in Hypochonder,  
Ready to burst his ribs asunder,  
Forlorn in smoky chambers sits,  
And reads, and sleeps, and spouts by fits,  
And fancies ev'ry Dun who knocks  
Is slipping Briefs into his box,  
Yet fondly hopes to reap at last  
The fruits of all his labours past ;

Waiting the tedious consummation  
Of twice ten winter's lucubration,<sup>1</sup>  
When for his light and summer reading,  
And, for a trifle, he might tread in,  
The flow'ry Paths of SPECIAL PLEADING! }  
Alas ! how low his pocket grows !  
He cruises oft at WILL's, or JOE's,  
And oft, as many a greater man does,  
Eats, drinks, and falls asleep at NANDO's ;  
Then dreams He that some point he's  
mooting,  
And with the learned HILL disputing,  
And though for conquest vainly hoping,  
When with that vet'ran Serjeant coping,

---

<sup>1</sup> " *Lucubration*"—"viginti annorum lucubrationes."  
See Sir John Fortescue's advice to his Rôyal Pupil, *de*  
*Laudibus Leg. Ang.* c. 8.

The fame of so renown'd a foe  
Consoles him in this overthrow,  
E'en by defeat he seems a gainer,  
'Thinks BUZZARD brings him a Retainer,  
And Briefs and Clients without number,  
Attend him in his golden slumber;  
Anon he'll dream that he embraces  
Gold Chains, Portcullises, and Maces;  
Then with a tough beef steak oppress,  
Fancy the SEALS are on his breast;  
He sees the Demon o'er him lower  
The *Incubus* of State and Power,  
And vainly struggles to get free  
From all his weight of Dignity;  
'Till chance some noisy Politician,  
Some hungry Quack, turn'd State-physician,

Thersites <sup>a</sup> like, from spleen and hate,  
 Arraigning all who rule the State,  
 With loud harangue effects his cure,  
 And wakes him from *peine fort et dure*.<sup>a</sup>

---

<sup>a</sup> Θερσίτης δ' ἔτι μῆνος ἀμείροπής ἐκολῶα  
 Ὃς ῥ' ἔπεα φρεσιν ἦσιν ἄκοσμά τε πολλά ἱε. ἥδη  
 Μάψ, ἀλλὰρ ἔ καὶ κόσμον ἐριζέμεναι βασιλεύσιν.

HOM. II. Lib. 2, 212.

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<sup>2</sup> “*Peine fort et dure*”—The penalty for standing mute in old time. *Peine* is supposed to be a corruption of *Prisone*, and so it is called in Statute 3, Ed. I. c. 12, which speaks of this punishment as part of the Common Law of the Land. It seems to have consisted in laying the Criminal on his bare back upon the naked floor, and placing a weight of iron upon his body, to be gradually increased till he pleaded, or, as some say, till he expired. But for the honour of the Laws enacted during the gracious Reign of his present Majesty, (*Act 12, Geo. III. c. 20,*) it is in effect abrogated. By

For thee, Dear JOB, the Stars design  
Thy Genius at the Bar to shine,  
There in full splendour to appear,  
And light the *Western* Hemisphere,  
Or in a Blaze at once break forth  
T' illumine the Region of the *North*;  
Already do I see thee there  
In brightness like the GREATER BEAR,  
The <sup>3</sup> STAR OF ARCADY, that rises,  
And flames at Sessions and Assizes,

---

this Statute, a criminal wilfully standing mute, or refusing to answer directly to the offence, shall be proceeded against in the same manner, as if he had voluntarily confessed, or been duly and regularly convicted.

3 "The Star of Arcady"—There seems to have been a doubt among the ancients, whether the Arcadian Star was properly the greater or the lesser bear; the *Sidus*



Nor will those Laurels fail to shed,  
Their verdant honours o'er your head,  
Which you, so late for \* *wrangling* famous,  
Transplanted from the Banks of Camus ;  
If to the Logic of the schools  
You join a *Special Pleader's* rules,  
And then to Westminster resort,  
And take a few short notes in Court,

---

*Arcadium Geminumque Plaustrum* in the *Œdipus* of Seneca, seems applicable to both.

\* "*Wrangling*"—It will be unnecessary to remark to the Classical Reader, that the Academical Honours, derived to the Students, who are candidates for the degrees of Bachelor of Arts in the University of Cambridge, are classed, and the several graduates dignified, by the appellation of *senior or junior wranglers, senior optimès and junior optimès*, according to the degree of learning and ability they have displayed in disputing or *wrangling* upon their Examinations in the public schools.

Sit snug behind some fat Attorney  
And make a friend of <sup>5</sup> Mr. Gurney,  
You'll gain, in time, your share of praise  
For *Arguments* on <sup>6</sup> *Paper days*,  
And much improve your legal notions,  
By th' Art of *wrangling* upon MOTIONS,  
Lamenting much your Client's hardship—  
“My Lard, I humbly move your Lardship—

---

<sup>5</sup> *Mr. Gurney*—A very eminent and ingenious shorthand writer.

<sup>6</sup> “*Paper Days*”—Days in each Term appropriated to the hearing of arguments on Cases reserved, and Issues in Law upon Special Pleadings. They are probably so called from the paper books containing these Issues, which are previously delivered to the Judges by the Clerk of the Papers, whose office it is to prepare them in the form prescribed by the standing orders of the Court. *Pascet.* 18 *Car.* II. 2 *Litt. Abridg.* 268.

“ Rule to show cause, my Lard, we crave it,  
 “ Upon a special *Affidavit*.—  
 “ We move to quash, in your discretion,  
 “ An order of a<sup>7</sup> *Special Session*,  
 “ Sign’d by *five* Aldermen at least,  
 “ Just after an Election feast.—  
 “ Order in Bastardy, my Lard,  
 “ Case *not appeal’d*, and doubly hard,  
 “ Twins—and the Aldermen who sat  
 “ Exceedingly intaxicate—  
 “ Nor on these grounds we rest alone,  
 “ My Lard, it plainly can be shown.

---

<sup>7</sup> “ *Special Session*”—Of Corporation Justices; an order in Bastardy not appealed against in time, may be removed into K. B. by *certiorari*. 1 *Salk*. 147, and quashed for objections on the face of it, *Rex v. Stanley*.

“ That neither County, Place, nor year,  
“ In which the parties liv'd, appear,  
“ Nor the least mention where they met  
“ Said Child or Children to beget;  
“ My Lard, the order is not *dated*,  
“ Nor any *filiation* stated—  
“ No mention of the Children's *sex*,—  
“ All which are radical defects;  
“ And as we deem the Case aforesaid  
“ So clear that nothing need be more said,  
“ Perhaps, my Lard, you'll aid our Suit,  
“ And grant us a *rule absolute*.”

Now, JOB, this manner of addressing  
Is so polite and prepossessing,  
So wonderfully well connected,  
Plain, elegant, and unaffected,  
I recommend the same to you,  
For making a genteel *Debüt*.

Nor less the passions you will move,  
 In justifying *Bail above*,  
 Whene'er you work the swindling Crew,  
 Or catechise the hireling Jew,  
 Him to bamboozle with success,  
 With smiles accost and soft address,  
 And ere with questions you confound him,  
 With *Irony*<sup>8</sup> come gently round him,  
 His fashionable whiskers note,  
 His rings of paste, and tarnish'd coat;  
 And compliment with due derision  
 All members of the circumcision;  
 Then strain each nerve, use all your might,  
 To *stultify* the Israelite;

---

<sup>8</sup> "*Irony*"—See Aristotle de arte Rhetoricâ Περὶ τῆς ἐξωμνήσεως καὶ ἰσχυρίσεως.

<sup>9</sup> *Stultify*—"Make a fool of." Law Term. See *Jac. Law. Dic.*

But if too wise to be o'ertaken,  
Well knowing how to *save his bacon*,  
In vain old Smouch you have turmoil'd,  
And find yourself completely foil'd,  
Then take the ground you went before,  
And strive to be jocose once more,  
Not overbearing, loud, and coarse,  
Like BORE'UM, bawling till he's hoarse,  
Who, like an irritated Bison,  
The roughness of his tongue relies on,  
But more in Mr. BOTH'RUM's style,  
Of poignant and facetious bile,  
Who, though long-winded, in the main  
Exhibits oft a comic vein,  
And when his adversary presses  
In motions circular progresses,  
Resembling much the wise STINKVINZEN,  
Who perseveres until he ends in,  
The very point that he begins in;

The <sup>10</sup> Carolina SKUNK, who pushes  
His head into the briars and bushes,  
And when he can no further go,  
Scatters his perfume on the foe ;  
Such genuine wit will oft prevail,  
When serious disputations fail,  
Will make e'en Special Juries smile,  
Will oft convince, sometimes beguile,  
And force to ludicrous grimaces  
Twelve men of grave Judicial faces,  
Whom counsel, greatly to their praise,  
Lead thro' the Law's bewild'ring maze,  
Perplex'd in classical confusion  
Of Flow'r, Trope, Figure, and allusion ;

---

<sup>10</sup> " *Carolina Skunk* "—For a further account of the  
Offensive Properties of this extraordinary animal, see  
*Catesby's History of the Two Carolinas*, of which coun-  
tries he is a native.

Till in a fog they gaping stand,  
Like mariners in Newfoundland,  
Or pigs who're wont, in hazy weather,  
To grunt and lay their heads together;  
Distrust and doubt and wild surmise  
Alternate in each bosom rise,  
And even o'er the Foreman's brains  
Cimmerian Night, and "Chaos reigns.

---

" " *Chaos reigns*"

————— CHAOS Umpire sits,  
And by decision more embroils the fray  
By which he reigns; next Him, high Arbiter  
CHANCE governs all.

*Milt. Par. Lost, Book II. 907.*



## LECTURE V.

OF DRESS AND ACTION *in Speaking*—Of  
more *tenuis Examination, and the best and*  
*most approved method of extracting Truth*  
*from EVIDENCE.*

'TIS strange, dear JOB, among the rules  
Of Tutors, in the ancient schools  
For Rhetoric renown'd, nor less  
For Judgment in their pupil's dress,<sup>a</sup>  
Though some have learnedly laid down  
The pattern of a Pleader's gown,<sup>b</sup>  
No common Lawyer, or Civilian,  
Not even TULLY, or QUINTILIAN,

---

<sup>a</sup> Vid. Quintilian Instit. Liber undecimus de cultu  
Oratoris.

<sup>b</sup> De Togæ formâ. Ibid.

One single syllable have said  
Touching the dressing of his Head—  
A science, though in former ages  
Unknown to Orators and Sages,  
In these politer days we find  
One great employment of mankind,  
And since, while Fashion bears the sway,  
Your head its dictates must obey,  
Must run thro' scratches, crops, and queues,  
Of questionable shapes and hues,  
And after all its changes past,  
In Grizzle Wig must end at last ;  
I think, dear JOB, upon the whole,  
'Twere best at once to shave your Poll,  
Lest while the wordy war is raging,  
And you the foe with warmth engaging,  
That Grizzle we may chance to see  
Revolting from a black Toupee,

And when too forward 'tis inclin'd,  
A Pig-tail sticking out behind ;  
Be you in other guise array'd,  
Your Tie-wig decently display'd,  
And when before the Bench you stand,  
Words apt, fit weapons at command,  
Although the Gods, as well you know,  
On you such wond'rous gifts bestow !  
A face so fortified with brass,  
I trust it would my own surpass,  
And voice which Envy must admire,  
And own that you excel the Crier !  
• At first, with accent mild and meek,  
And looks that diffidence bespeak,

---

• *Proæmio lenis convenit Pronunciatio,*  
*Non protinus est erumpendum, sed danda brevis cogi-*  
*tationi mora. Ibid. Quintilian, L. 11.*

With modest air and timid hand  
<sup>d</sup> Hold up your Brief, and stroke your Band,  
<sup>e</sup> For Modesty, whose gentle mien,  
 If haply at the Bar she's seen,  
 The Court with that respect will treat  
 Which strangers may expect to meet,  
<sup>f</sup> But, when grown warm in your narration,  
 Proceed to loud Vociferation,  
 Strong Phrase, and bold Gesticulation; }  
 Then, like a Prisoner from the Bilboes,  
 Stretch out your legs, your arms and elbows,

---

<sup>d</sup> Paulum commorandum est ut amictus sit decen-  
 tior. Ibid.

<sup>e</sup> Nihil est enim ad conciliandum gratius Verecundiâ.  
 Ibid.

<sup>f</sup> Ast ubi jam calor eam concitaverit etiam Gestus  
 cum ipsâ orationis celeritate crebrescat. Quint. L. 11.

'Tillyou manœuvre them at length,  
With all the spirit, ease, and strength,  
Of some young Hero, first essaying  
The noble art of cudgel-playing,  
Or *Fugelman*, an active part  
Performing in the Tactic art ;  
Flourish your Brief, look boldly round,  
‡ And stamp your foot against the ground,  
Then smack your forehead, and your thighs,  
<sup>h</sup> Like one that's bit by gnats or flies,  
And so go through your Exercise :

---

‡ Id in Callidio, Cicero desiderat, non frons, inquit, percussa, non Femur ; pedum (quod minimum est) nulla supplisio. *Cicero in Bruto, Quint. lib. undecimus.*

<sup>h</sup> Nunquam, inquit, Octavi, collegæ tuo Gratiam referes, qui nisi fuisset istic hodie te muscæ comedissent. *Cicero in Bruto.*

For when a Counsel tells his story,  
As Tully says, *de Oratore*,  
Arms, legs, and thighs, must play their part,  
And aid the Rhetorician's art;  
<sup>i</sup> *Action* must all his words enforce,  
And make his body hold discourse.  
As nothing props a rotten case  
Like strength of Lungs, save pow'r of face,  
I ask no wart so near my nose,  
<sup>k</sup> Or scraggy neck like Cicero's,  
Or some Provincial's face I've seen,  
Gaunt, oblong, ossified, and lean;  
Grant me, ye Gods, for pleading Causes,  
Some breadth of Cheek, some depth of *Fauces*,

---

<sup>i</sup> Actio in dicendo una dominatur. Est enim actio, quasi sermo Corporis. *Cicer. de Orat.*

<sup>k</sup> Procerum et tenue Collum. *Cicero de Seipso Brutus.*

A strength and dignity of Feature,  
Something I can't express in Metre,  
That cheerful confidence of Visage  
Which gives of wit and sense a presage :  
Whene'er a Counsel's pinch'd and prest,  
Much will depend on width of Chest,  
The strength and tone of th' *Epiglottis*,  
And state in which his learned throat is ;  
For if 'tis true, as I conjecture,  
(And hinted in a former Lecture,)   
That Process is a LEVER, Pleading  
Is some *mechanical* proceeding,  
Combining somewhat of the SCREW,  
The PULLY, and the LEVER too,  
By which great Advocates compel  
Truth from the bottom of her well,  
And drag her by her dripping locks,  
Disguis'd into the Jury-Box :

While Judges yawn, and patient sit,  
To hear th' encounters of their Wit;  
For Wit, although the lot of few,  
All Counsel think their lawful due,  
And when it fails, as wit is wont,  
When too much labour's us'd upon't;  
A Witness ever and anon  
Serves like a hone to whet it on,  
Or like a Butt is fix'd and shot at,  
That Truth the better may be got at,  
Who baffled in the first attack,  
Stares like the man in the Almanac,  
Perplex'd with Problems multifarious,  
And pierc'd with darts through mem-  
bers various,  
Quite down from ARIES to AQUARIUS. }



## LECTURE VI.

*Instructions continued, and illustrated by the Examples of MR. COUNSELLOR BOTHER'UM, and MR. COUNSELLOR BORE'UM, introductory to the Trial of Trespass in Assault and Battery at a late contested Election.*

JOB, of all Powers that wind, or draw,  
And work that great Machine, the Law,  
Do thou, my Friend, keep most in view  
That greatest of all Pow'rs, the SCREW,  
The power of *screwing* and distressing,  
By worming, winding, and compressing,  
Facilitates the extrication  
Of Truth by cross-examination;  
But no one Engine or Invention,  
Forg'd by the Dæmon of Contention,

Gives such a purchase in a Cause,  
 “ Beyond the Vigour of the Laws,”  
 So governs and upholds, unseen.  
 The movements of this vast Machine,  
 As Pride, Resentment, and ill-blood,  
 Which form the ὕλη,<sup>a</sup> or the *Wood*,  
 Create the matter and foundation,  
 And subject of all Litigation :  
 What robs of ease and independence,  
 So many Plaintiffs and Defendants,  
 And leaves their Purse at our devotion,  
 To grease, and set the Wheels in motion?—  
 Vengeance ; that fills th’ Historic Page,  
 The scourge of ev’ry Clime and Age,

---

<sup>a</sup> ὕλη,—“ *Wood*,”—τὸ ὑποκείμενον ἐξ ὃ τὶ ἀπολείπειν αἰ  
 ἔργον—the subject matter of which any thing is formed.  
 ARISTOT. Polit. 1.

'Twas WRATH, destructive WRATH alone,  
 Steel'd the proud heart of PELEUS' Son,  
 Brought to the Greeks a <sup>b</sup> *thousand woes*,  
 And sent them to the *Dogs* and *Crows*;  
 The same fell cause wrought equal dudgeon  
 'Twixt JOHN-A-GULL and JOHN-A-GUD-  
 GEON,

And left them with the like contrition,  
 Precisely in the same condition :  
 'Twas WRATH and Hatred's raging fires,  
 The breasts of these two harmless Squires  
 To deeds of desperation drove,  
 And perfected the will of JOVE,<sup>c</sup>

---

<sup>b</sup> ———— μυρί "Αχαιοῖς αλγῆ εθηκε

——— αὐτὰς δὲ ἐλώγια τεῦχε κύνεσσιν

Οἰωνοῖσι γε πᾶσι. <sup>c</sup> Διὸς δ' ἤτελείετο βελή.

Ah! JOHN-A-GULL, thou wretch ill-judging!

And thou, relentless, JOHN-A-GUDGEON!  
How oft I've heard you in distress,  
And bitterness of wrath, confess,  
That better far than Litigation  
Had been the prudent Arbitration,  
Of one so noted for his *Candour*  
And *sage* advice as SIR JOHN GANDER!  
An honest prosing Knight, who ne'er  
Of *Damages* and *Costs* could hear,  
(Since first he chanc'd to be *cornuted*,  
His action brought, and was nonsuited,)  
But with a shrewdness, seldom seen  
In one of SIR JOHN GANDER's mien,  
Join'd with a confidence and Phlegm,  
Which no sound Lawyer will condemn,

The *same good story* He'd relate  
 Of that wise Prince and Potentate,  
 PETER the CZAR, surnam'd THE GREAT, }  
 "Who, when He came to Albion's Shore,  
 "Her arts and manners to explore,  
 "That Dome survey'd with curious eyes,  
 "Where RUFUS caus'd his Courts to rise,  
 "There, when in <sup>d</sup>*well-comb'd* wigs He saw,  
 "A group of heads, all learn'd in Law,  
 "What are those grizzly forms (He cried)?  
 "Lawyers, th' Interpreter replied—  
 "Lawyers! that never can be true—  
 "In all my Realms I have but *two*,  
 "And to those Realms should Heaven  
     once more  
 "Vouchsafe their Monarch to restore,

---

<sup>d</sup> Καθηκομνητες Ἀχαιοι. HOM.

“ One of those two”— — but what the  
Czar meant,

Whether to raise him to Preferment,  
Or *sus per col.* was his intention,  
This worthy Knight forbore to mention,  
Save what by gestures he exprest,  
And left his friends to guess the rest.

For You, whose heads by fate accurst,  
Some Fiend infatuated first,  
Long are you destin'd to repent  
That hour into those Courts you went,  
Alas ! full often have your spouses  
Foretold the ruin of your houses,  
With sighs, and tears, and empty purses,  
Wail'd your Successes and *Reverses* ;  
Nor spar'd some pretty keen reproaches,  
Riding in Gigs instead of Coaches ;

“ This plaguy Lawsuit on our backs,  
“ Is heavier than the *Income Tax* ;  
“ Sure Law was made to be the undoer  
“ Of just such Nincompoops as you are !  
“ For one must needs to FERRET go,  
“ T’other to CORMORANT, and CROW,  
“ All of the true rapacious breed,  
“ As ever a *poor* Client flay’d,  
“ Who never yet deserv’d a curse  
“ For sparing a *rich* Client’s purse,  
“ But make his case so much their own,  
“ They’ll pluck and pick him to the bone,  
“ And see him thoroughly dissected, }  
“ Rather than have his Plea rejected, }  
“ Or Cause, for want of Cash, neg- }  
“ lected.”

Dear JOB, this legendary strain  
Saves Authors much fatigue of brain,

In hunting oe'r Parnassian ground  
For phrases better miss'd than found,  
I ne'er in Epic or in Ode  
The Muses' fiery Courser rode,  
Was ne'er ambitious to be seen  
Near that same *horsepond* HIPPOCRENE;  
I ask no <sup>c</sup> forked hill to dream on,  
No aid from Deity or Dæmon,  
Instead of *Hæmus* or SPERCHIUS,  
“*Give me a Brief at Nisi-Prius*”—  
The only aid that I require, is  
The aid of *Juries*, and <sup>1</sup> *venires*,

---

<sup>c</sup> Nec in bicipiti somniasse Parnasso  
Fingar--*Pers.*

---

<sup>1</sup> “*Venire*”—A *venire* is the first step in the Jury process, being a *Precept* directed to the Sheriff to require



Unless 'twere possible to choose  
Some iron-tongu'd, long-winded Muse;  
If such there be, whose lungs would reach  
The length of Mr. BORE'UM's speech,  
And lift my numbers to th' extent  
And height of BOTH'RUM's argument.  
Oh! had you heard the Gudgeon Cause,  
And number'd all the *Hems* and *Haws*,  
With all those arguments that I did,  
Which left the conflict undecided,  
You ne'er had thought 'twas Mr. BORE'UM,  
Or BOTH'RUM, who drove all before 'em,  
But that two Orators had come  
Express from ancient Greece or Rome,

---

in the words "*præcipimus venire facias*" that he will  
cause to come, &c. twelve free and lawful men, &c. &c.  
to form a Jury, &c.

Or LAERTIADES had stood  
With AJAX near Scamander's flood,  
To plead for HOMER, and dispute  
Troy's bounds in an *Ejectment* suit,  
'Gainst Worth and Learning's favourite  
Client,

The venerable JACOB BRYANT:  
That Nemesis herself had breath'd  
Through BOTH'RUM's windpipe copper  
sheath'd,  
Or *Wildman's* <sup>2</sup> Bees had reappear'd,  
And settled upon BORE'UM's beard,

---

<sup>2</sup> *Mr. Wildman*, of Plymouth, celebrated some years since for his wonderful skill in the management of Bees, and his discovery of a method of taking their honey without destroying them. See the Minutes of the *Society for the Encouragement of Arts, &c.* in the Year 1766.

And left upon his mouth of leather  
Their honey and their stings together ;  
For thus, quick rising on the Plaintiff's  
    side,  
The deep-ton'd BOTH'RUM spoke, and  
    BORE'UM slow replied.

## LECTURE VII.

## THE TRIAL,

*As taken by an eminent Short-Hand Writer.*

JOHN-A-GULL	} In Trespass.
at st.	
JOHN-A-GUDGEON	

*For the Plaintiff, MR. COUNSELLOR BOTHER-  
'UM.—For the Defendant, MR. COUNSELLOR  
BORE'UM.—MR. BOTHER'UM opens the Plead-  
ings—His Speech at length.*

I RISE with pleasure, I assure ye,  
With transport to accost a Jury,  
Of your known conscientious feeling,  
Candour, and honourable dealing,  
From <sup>1</sup> Middlesex discreetly chosen,  
*A worthy and an upright dozen.* (aside.)

---

<sup>1</sup> "Middlesex"—This being an Election affray, the *Venue* is supposed to have been changed upon the usual *Affidavit*, for the sake of a more fair and impartial Trial, before a *Middlesex Jury*.

This Action, Gentlemen, is brought,  
By JOHN-A-GUDGEON for a *tort*;  
The Pleadings state, “ *that JOHN-A-GULL*  
*With envy, wrath, and malice full,*  
*With swords, knives, sticks, staves, fist and blud-*  
*geon,*  
*Beat, bruis’d, and wounded JOHN-A-GUDGEON,*  
FIRST COUNT’S “ *FOR THAT*” *with divers jugs,*  
*To wit, twelve pots, twelve cups, twelve mugs,*  
*Of certain vulgar drink, called toddy,*  
*Said Gull did sluice said Gudgeon’s body ;*  
The SECOND COUNT’S, *for other toddy,*  
*Cast, flung, or hurl’d on Gudgeon’s body ;*  
*To wit, his gold-lac’d hat and hair on,*  
*And clothes which he had then and there on ;*  
*To wit, twelve jackets, twelve surtouts,*  
*Twelve pantaloons, twelve pair of boots,*

*Which did thereby much discompose  
Said Gudgeon's mouth, eyes, ears, and nose,  
Back, belly, neck, thighs, feet, and toes,  
By which, and other wrongs unheard of,  
His clothes were spoil'd, and life despair'd of."*

To all these counts the plea I find,  
Is *son assault*, and *Issue's* join'd—  
Such, Gentlemen, is *word for word*  
The story told on this Record.—  
This fray was at a feast or revel,  
At *Toadland*, on the Bedford Level,  
Giv'n, as was usual at Elections,  
By GUDGEON to his Fen-Connections  
They'd had a meeting at the *Swan*  
The day before the Poll began,  
And thence adjourn'd it to make merry  
With Mr. COOT who keeps the Ferry.

Now JOHN-A-GULL, who thrusts his nose  
Wherever JOHN-A-GUDGEON goes,  
To this same feast without suspicion,  
Unask'd, it seems, had gain'd admission ;  
COOT had just finish'd an Oration,  
And GUDGEON, with much approbation,  
Was singing an Election Ballad,  
Penn'd by th' ingenious Dr. MALLARD,  
(That Orthodox and learned writer,  
Who bids so fairly for a mitre ;) ·  
When GULL, who heard this song or sonnet,  
With Mr. GUDGEON's comments on it,  
This GULL (whose very name denoted  
The character for whom he voted).  
Flourish'd his knuckles in derision,  
And with much promptness of decision,  
Began to pummel and belabour  
The short ribs of his peaceful neighbour,

But first with tweaks assail'd his nose,  
And interspers'd said tweaks with blows ;  
GUDGEON *explain'd*, and GULL recourse had  
To other tweak, like tweak aforesaid—  
G—d knows a milder gentler creature  
Never was seen in human nature,  
Than the forbearing and well-judging,  
Discreet, and gentle JOHN-A-GUDGEON ;  
And, Gentlemen, there's no man's face is  
Better receiv'd at all your races,  
Wells, mouths, and water-drinking places ;  
Was Alderman, and Mayor elect ;  
Once had the honour to be prick'd  
For Sheriff, which important station  
He gain'd without solicitation,—  
No doubt his Lordship recognizes  
The coat he had on at Assizes,



A velveret, genteel and neat,  
With tabby lin'd, and frogs complete,  
Made for Squire GUDGEON's wedding ball,  
When first he came to *Webfoot Hall*,  
An ancient seat in th' Isle of Ely,  
Where all the GUDGEON's live genteely,—  
Which coat so trimm'd, so frogg'd, said GULL  
Did spoil, besmear, and disannul,  
With the most villainous libations  
Of the most vile of vile Potations ;  
For proof, we'll call GULL's worthy friend,  
Who keeps a School at *Toadland's End*,  
One SIMON TROUT, a pious Pastor,  
And Dr. TENCH, who spread the plaster,  
And Farmer CHUBB, an honest Yeoman,  
Who speaks the truth, and cares for no man,  
But above all, to prove our case,  
We'll show you Mr. GUDGEON's face,

Where ev'ry injur'd feature pleads  
'Gainst JOHN-A-GULL's atrocious deeds;  
What facts, what species of excuse,  
My Brother BORE'UM will produce,  
What case he'll make, and how maintain  
His Plea of *son Assault demesne*,  
Wise as he looks, you may rely on't,  
He knows no more than his own Client;  
'Tis for you, Gentlemen, to say  
What damage JOHN-A-GULL shall pay;  
'Tis in your wisdom, Gentlemen, to pull  
So wide the purse-strings of this factious  
GULL,  
That he no more may triumph and parade  
The streets of Cambridge in a blue  
Cockade,  
Singing the praises of a British Jury,  
From the *Pig-market to the Petty-Cury*;

But back to *Toadland* as he bends his way,  
Whoe'er beholds him <sup>a</sup> to his friend may say,  
Mark, how the Jury have rever'd the Laws,  
Giv'n the just Judgment in the GUDGEON  
Cause,  
Taught the proud GULL to sing an humbler  
strain,  
And sent him waddling to his bogs again.

---

<sup>a</sup> Ὡς δὲ τις εἰπεσκεν ἰδὼν εἰς πλησίον ἄλλον.

HOM. *passim*.

---

## LECTURE VIII.

*Examination of Witnesses for the Plaintiff—*

*Mr. SIMON TROUT, dissenting Preacher,  
and Schoolmaster, examined by Mr. BOTH-  
ER'UM—Cross-examined by Mr. BORE'UM  
—Evidence of DR. TENCH, Surgeon and  
Apothecary.*

*Bother. } PRAY are our Witnesses all here,  
whispers  
his Atty. }* *Our scaly friends from Toadland Mere?*

*Atty.* Here's Dr. TENCH, and Preacher TROUT,  
And Farmer CHUBB will come, no doubt.

*Bother.* Call SIMON TROUT—we'll first begin  
With Mr. TROUT,—come, swear him in.

Crier. *Here, SIMON, you shall—(silence there)*  
*The Truth, and all the Truth declare,*  
*And nothing but the Truth be willing*  
*To speak, so help you G-d—(a shilling)[aside.]*  
TROUT'S SWORN.—

(*Bother.*) Pray, Sir, did you attend  
Th' Election Feast at *Toadland's End*?

The feast, I mean, before the Poll-day?

Trout. Yes, Sir, I tarried there the whole day—  
Albeit, I never go to dinners,  
To feast with publicans and sinners,  
And ever it has been my rule  
On no account to quit my School,  
As in my absence, I'm aware  
*Satan* will not be idle there!

I own, Sir, I for once transgress'd it,  
The inward light so strongly press'd it,

A Call I never could withstand !

But touching the affair in hand,

As it regards the late Election,

I've but a feeble recollection ;

*Bore.* } (Your *inward light* must fail you greatly,  
*Aside.* } If you've forgot what pass'd so lately.—)

*Trout.* There was a squabble, and some oaths,  
And liquor spilt on Plaintiff's clothes,  
Squire GUDGEON's face was bruise'd, I've  
heard,

His Sunday rayment much besmear'd,

And Dr. TENCH inform'd me-- --

(*Bore.*) Pooh!--

Don't tell us, Sir, what TENCH told  
you---

*Bother.* Stop, Mr. BORE'UM, by your leave,--

*Bore.* My Lord, I humbly do conceive--

*Bother.* These interruptions, I declare,

Would almost make a Parson swear---

*Bore.* Do Mr. BOTHER'UM let *me* speak---

*Bother.* Now he's begun he'll talk this week---

*Bore.* Well, Mr. TROUT, so all you know then,  
Is what you've *heard* of Plaintiff's clothing?  
All *hear-say* is it?---

(*Trout*) No, Sir, no,---

I lifted up mine eyes, and lo!

I did behold, in wrath, Squire GULL,

Smite Mr. GUDGEON on the skull;

And Dr. TENCH, a wise and wary,

And learned Fen-Apothecary,

Doubted, he said---

(*Bore.*) Do stop, my friend,

Cannot I make you comprehend?---

*Bother.* Come, Sir, we won't detain you—GULL

You're sure smote GUDGEON on the Skull,

*Trout.* He did---

*Cross ex<sup>d</sup>* } (*Bore.*) Stay, Mr. what-d'y-e-call him,  
*by Mr.* }  
*Boreum.* } You say you saw GULL bruise and  
maul him.

*Trout.* Yes.

(*Bore.* And you never go to dinners,  
To féast with publicans and sinners?---  
What, was the bludgeon pretty thick?

*Trout.* I cannot say I saw the stick.---

*Bore.* Stay, Sir, I think that you're a Teacher,  
A Spiritual Pastor, and a Preacher,  
Now recollect you're on your oath, Sir,  
Mind you do justice to them both, Sir,  
Was there no boxing match—speak out—  
Nothing like fighting, Master Trout?

*Trout.* Why verily much strife arose,  
Divers and sundry kinds of blows,  
Much provocation too, albeit,  
I was not there at first to see it;



A song was humm'd, which caus'd dis-  
sension,

And seem'd of Heathenish invention,  
Which though it lack'd both wit and  
keenness,

Savour'd of malice and uncleanness,

And, sung with loud vociferation,

Rous'd the Defendant's indignation,

Who seem'd to think it cast reflections

On him and all the GULL connections :

This song, though spiritless and dull,

Did sorely trouble Mr. GULL,

And oft repeated in his ear,

Did cause him to blaspheme and swear,

'Till, G—d forgive him for't, he rose,

And seizing on Squire GUDGEON's nose,

He squeez'd it 'twixt his thumb and finger,

Stamp't on the song, and d—d the singer;

Now when much strife and wrath ensu'd,  
Both which I always have eschew'd,  
I fled—but soon return'd to pray  
That Heaven would stop this sinful fray,  
And we like Brethren might agree,  
And live in peace and unity---

*Bother.* Swear Dr. TENCH---

(*Crier.*) Here, Doctor, look---  
Take off your glove, and kiss the book---  
The Doctor's sworn.—

(*Bother.*) Good DOCTOR TENCH,  
Pray tell the Jury and the Bench,  
All that you saw and heard that day---

*Tench.* Sir, I know nothing of the fray,---  
I was call'd in at the Conclusion,  
T' inspect a *Vertical* Contusion.

GUDGEON was then without his shirt,  
His body much besmear'd with dirt;

There was an ugly awkward cut  
Ran quite athwart the *Occiput*,  
He'd have been *comatose*, I'm sure,  
And far beyond my skill to cure,  
Had I been call'd ten minutes later—  
I trembled for the *Dura Mater* :  
The cuticle, or outward skin,  
Portended something wrong *within*—  
The *fauces* in a sad condition !  
Betwixt the *Nares* no partition !  
But both so forc'd into conjunction,  
Th' *Olfactories* declin'd their function,  
Some teeth were broke, and some were lost,  
The *Incisores* suffer'd most,  
Much mischief done to the *Molares*—  
And, what a very strange affair is,  
Not the least symptom could I see  
Of *Dentes Sapientiæ*.

In all my *pugilistic Cases*,  
At feasts, elections, fairs, and races,  
A worse than this I never met,  
Nor ever saw an instance yet,  
In all that *branch of my Profession*,  
Where blows have made so much impres-  
sion !

*Optics*, my Lord, a perfect jelly !  
One large contusion on the belly,  
Two on the *Costæ*, and, as I guess,  
A kick upon the *Os Coccygis*,  
Had caus'd a *Tuber*, or a bump  
Around the region of the rump.

*Bother*. You took some blood, Sir, from him ?

(*Tench.*) Plenty—

Phlebotomiz'd him ounces twenty;  
Order'd in lieu, one ounce, good weight,  
*Magnesiae Vitriolat*:

*Subinde* gave, when faint or sick, Sir,  
My renovating *Fen-Elixir*,  
Then clapp'd my patent plaster on,  
My genuine *Ichthupharmacon*.---

*Bother*. Sir, of your practice we've no doubt,---

*Bore*. So much for TENCH, ---come, hand him out.

## LECTURE IX.

TRIAL continued—*Examination of Farmer CHUBB by Mr. BOTHER'UM—Cross-examined by Mr. BORE'UM—Conclusion of the Evidence for the Plaintiff.*

*Court.* WELL, who's your next?

(*Bother.*) Set Farmer CHUBB up,

*Bore. aside.* CHUBB's recollection I must rub up,

*Bother.* So, Mr. CHUBB, I see 'tis you ;  
You live at *Toadland's End*?

(*Chubb.*) I do.

*Bother.* You din'd at the Election meeting?

*Chubb.* Yes, sure I did, I loves good eating.

*Bother.* Was there a *Bickering* where you sat?

*Chubb.* No, we had no such dish as that.

*Bother.* No *broil*, no *bickering*, no *fracas*?

*Chubb.* No, no such dishes as I saw,

There might be *broils* for ought I knew,

To please such gentlemen as you.

*Bother.* Why CHUBB, you must have seen at least

These parties at the *Toadland* feast:

Was any thing by Plaintiff said,

Which to such lengths Defendant led,

And caus'd an act so indecorous

As that which now appears before us?

*Chubb.* Anan?

(*Bother.*) Why, surely, you must know

Whether these men had words or no?

*Chubb.* Words! aye, they'd words enough, God  
knows,

Besides some pretty tightish blows.

*Court.* Hark ye, my friend, was GULL, d'ye think

Disguis'd, or much inflam'd with drink?

*Chubb.* Neither---as sober as a judge,  
Th'of to be sure he seem'd to grudge,  
Being as how his coat was shabby,  
Squire GUDGEON's velvet, lin'd with tabby;  
But as for drink, my Lord, he chose  
To fling all that o'er Plaintiff's clothes.  
My Lord, I wishes to be going  
For 'tis a charming time for sowing---

*Bother.* Stay, Mr. CHUBB, speak out, Sir, do. }

Did GULL beat GUDGEON? is that true? }

*Chubb.* Beat him! he beat him black and blue! }

I never *see'd* a prettier fight,  
So full of malice like, and spite.

*Bore.* A fight! Ho, ho! the truth's come out,  
A fair set-to, a boxing bout?--

*Bother.* And this you positively swear!

*Chubb.* Aye sure; why SIMON TROUT was there;



SIMON, for all he seems so shy,

Please you, my Lord, knows more than I.

*Bother.* How say you? did not TROUT advise

'Gainst such unchristian Exercise?

*Chubb.* Yes, after praying and beseeching,

SIMON stood up, and fell a preaching,

And like the picture of ST. PAUL,

Began to sarmonize us all,

Bad us hold fast of what was good---

And well that doctrine understood,

For with the tankard he made bold,

And seem'd main loth to quit his hold.

*Bother.* What, did he preach, d'ye say, and stand

With this same tankard in his hand?

*Chubb.* Aye sure: he first threw back his wig,

And took a pretty handsome swig,

Then held the tankard up to view,

All one as you your Brief may do,

Saying, that wicked stuff within  
Did cause a multitude of sin.

*Bother.* Why CHUBB, now, on your Oath, man, say,  
Did not this preaching stop the fray?

*Bore.* After this speech of SIMON TROUT,  
Had you, or not, a boxing-bout?

*Chubb.* Why, yes—I scorns to tell a lie,  
TROUT says to me, as I stood by,  
Can'st keep a secret? yes, says I. }  
Why then, says he; CHUBB 'tis not right,  
That we should lose so sweet a fight,  
CHUBB, since so good a man you're reckon'd,  
I wish that you'd be GUDGEON's *second*;  
If you'll just clap him on the shoulder,  
And say you'll be his *Bottle-holder*,  
'Twill cheer his heart, and stir his blood,  
And make him fight, and do him good;

I long to see him doff his wig,  
And clench his fists like BEN the BIG ;  
And if you'll make the Champions strip,  
And lend my drunken Clerk your whip,  
D-m-me, if he sha'nt round the ring go,  
While I hold stakes, and guard the *Stingo*.

*Bother.* This is our case ; my Lord, we've done---  
So BOTH'RUM spoke, and BORE'UM thus  
begun.

## LECTURE X.

*The DEFENDANT'S CASE—Mr. BORE'UM'S  
Speech—Interrupted by Mr. BOTHER'UM  
—His Law Argument—Cites Cases—An-  
swered by Mr. BORE'UM—Conclusion of  
Mr. BORE'UM'S Speech, and of the Argu-  
ments on both Sides—End of the Tenth  
Lecture of the Second Book, and the last of  
the PLEADER'S GUIDE.*

*Bore.* So much for Facts---the proud array  
Of Facts, display'd in proof this Day---  
I say, if ever there existed,  
A cause wherein the Facts were twisted,  
Distorted, warp'd, I say distorted,  
And every witness pack'd and sorted,  
And tutor'd, Gentlemen, t'outface  
The Truth, and patch a rotten case,

'Tis this—that skilful Fen-Physician  
So fully prov'd his Erudition,  
The dire effects of the disaster,  
Th' Elixir, and the patent Plaster,  
I thought my learned Friend, for one,  
Would *try* this *Icthupharmacon*;  
I waited (as his Case was lame)  
To hear how he'd *apply* the same,  
And put in proof that famous drench,  
Prescrib'd by learned Dr. TENCH---  
TENCH, I must own, took blood enough,  
And show'd his learning *quantum suff.*;  
But, as for that same SIMON TROUT,  
(At once so thirsty and devout,)  
There was some *method* and connection  
In that same Preacher's recollection;  
He ne'er with Publicans had fed,  
By inward light alone was led;

He never from his school would venture,  
Lest *Satan* at the door should enter,  
Defeat at once the Spir'tual Pastor,  
And get the Whip-hand of the Master ;  
TROUT's story was a string of Fictions,  
Self-praises and self-contradictions ;  
But, (not to waste your precious moments  
With idle and superfluous Comments,)   
CHUBB swore, on cross-examination,  
GUDGEON gave GULL great provocation,  
And both agreed to strip in Buff,  
And fight it out at fisty-cuff---  
Now fighting's in itself an action  
That gives both parties satisfaction,  
A secret joy the Bruiser knows  
In giving and receiving blows ;  
An inward transport, only tasted  
By those who've thoroughly been basted ;

I'll prove it to my learned Brother,  
These Gentlemen oblig'd each other,  
And each exerted his endeavours  
To prove no niggard of his favours;  
For whosoe'er GULL's face peruses,  
Will fairly own, that nobler bruises,  
More scientific, more severe,  
No fighting Baronet, or Peer,  
Though pupils of th' illustrious Johnson,  
E'er laid his adversary's Sconce on---  
In war as well as peace, we see  
A kind of *Reciprocity*,  
A sort of mutual requiting,  
Which both the parties take delight in---  
If both are drubb'd, why both are quit,  
*Volenti non injuria fit*---  
It is a *dammum*, as we say,  
A *dammum absq' injuriâ*-----

Now, for a man, my Lord, to come,  
 A vile Election song to hum,  
 And, for a man, my Lord, to go,  
 For to gesticulate ; and so --- ---  
 As I was saying, for to go --- --- ---

*Bother.* My Lord, I feel no small remorse  
 In checking Mr. BORE'UM's course,  
 But as 'twill cut this matter short,  
 And save your Lordship's time in Court,  
 Be it for argument admitted  
 That both the combatants were pitted,  
 PARKER *Chief Baron* held that bruising,  
 Deem'd so delightful and amusing,  
 Was an illegal dang'rous science,  
 And practis'd in the Law's defiance,  
 But (as my Friend is in the dark)  
 It may be proper to remark,  
 The Case is BOULTER *versus* CLARK---



The Cases in the Books are plenty--  
I'll just beg leave to quote you twenty,  
Some special Verdicts, and Demurrers  
From DURNFORD, BOSANQUET, and  
BURROWS;  
Some late decisions of the Courts,  
In point, my Lord, from TERM REPORTS,  
All Books for solid information,  
Held in the highest estimation.  
But, stay, perhaps it may suffice, if  
I cite one case, and that's decisive---  
A Case He little dreams upon,  
*Mathew*, my Lord, and *Ollerton*---  
Where *one* a beating underwent  
By his own licence and consent,  
I mean, my Lord, that famous beating,  
In *Comberbach*, (218) two hundred eigh-  
teen,

Court held, and so 'twas understood,  
The *licence* void, the *beating* good---

Court. *Associate*, hand me the Record---

Well, Mr. BORE'UM---

(*Bore.*) Hem---my Lord?

*Court.* What say you to the Cases quoted?

*Bore.* My Lord, these cases I have noted;

Mere *Nisi Prius* cases, loose,

Loose law, my Lord, quite out of use---

My learned Friend is fond of citing

Old cases, which He's seldom right in;

Settling the Law, as some great men do,

On points reported *arguendo*,

That Case in *Comberbach*, my Lord,

Arose in *Debt* upon award,

And such a Case, as that, no doubt,

Is what I little *dream'd* about.

What we rely on, is a *saying*  
Of *Dalton's*, touching Cudgel-playing ;  
*Two* play at Cudgels for the nonce,  
For pastime, and a broken sconce :  
*A* breaks *B's* head, *B* makes assault on  
*A's* nose, "*No battery, quoth Dalton,*"---  
Now, if the Law of bloody noses,  
And broken heads, as he supposes,  
And states in *Chapter twenty-second*,  
Good Law at single-stick is reckon'd,  
I see no reason for refusing  
Same Law to Boxing and to Bruising---  
Besides, my Lord, our Special Plea  
Is *son Assault demesne*, d'ye see :  
CHUBBSWORE to threat'nings, provocations,  
Loud oaths, and fierce gesticulations,  
Such oaths---(*these spectacles, God's rot 'em,*  
*Have gall'd my nose from top to bottom*)[aside.]

Such oaths---it shocks me to rehearse 'em,  
(*Why now they're tumbled down, God's curse*  
                  'em) [aside.]

In short, what CHUBB both heard and saw  
Amounted to *Assault* in Law ;  
GUDGEON assaulted, and attack'd  
My Friend, in Law, if not in fact,  
And this is Law his Lordship knows ;  
But now, for instance, we'll suppose  
The simple Case of *A* and *B*,  
*A* is my finger, do ye see,  
My adversary's Button, *B*;  
Now, if my finger *A* I put on  
My learned Adversary's button,  
It may be *Trespass*, or a Plea  
Of *son Assault demesne* for *B*;  
And if a little I should shake it,  
And pull the button off, I take it

It would be *batt'ry*, and we say  
That *B* was beat, and bruise'd by *A*;  
That *A* said *B* did strike and wound,  
And in the Pleadings 'twould be found,  
*A* knock'd *B* down upon the ground. }  
And is not this a sound defence?  
Is it not Law, and common sense?  
'Tis for you, Gentlemen, to say  
Which of these two began the fray;  
But a more scandalous transaction,  
Paltry, vexatious cause of action,  
Or a more lame, more flat, more stale,  
Dull and unprofitable tale,  
I never met in all my reading,  
In the whole course of Law-proceeding, }  
In study, practice, or in pleading,  
Than this same woful trump-up story,  
My learned Brother has just laid before ye --

And now, my Lord, I say no more,  
My Lord---than what I said before---  
Bút thus much I'll make bold to say,  
If all that I've advanc'd this day,  
Be not good Law, my Lord, and sound  
As e'er was broach'd on legal ground,  
Soon as to chambers I return,  
All my Black-Letter'd Books I'll burn--- ---  
“ Hold, hold, (quoth Both'rum) 'twould  
be cruel

To turn your *fixtures* into fuel,  
Those precious Tomes, with cobwebs spread,  
Which sleep so peaceful o'er your head !  
Ere yet that sentence is decreed 'em,  
Do *read 'em*, Mr. BORE'UM, *read 'em*.”---

Thus they, as when attun'd to sprightly  
strain,  
Bass viols grumble, and Bassoons complain,

Or humble Bees their drowsy notes prolong,  
 With drones contending in alternate song,  
 Incontinently held their vain contest  
 In taunting mirth, and spleen provoking jest;  
 'Till tir'd at length, (when each had rack'd  
     his brain,

Oft rose and hemm'd, and hemm'd, and rose  
     again)

As those fam'd heroes on the Phrygian shore,	}
- Ajax, and bold Priamides of yore,	
Turn'd peaceful friends, <sup>a</sup> when they could	
fight no more,	

These gen'rous Chiefs resolv'd awhile to end  
 The doubtful conflict, and the suit suspend,

<sup>a</sup> Η μὲν ἐμαρνάσθη ἐξιδὸς περὶ θυμοβόροιο

ἢ δ' αὖτ' ἐν φιλότῃ διέμαχεν αἰθμήσαντες.

HOM. Iliad, H. 301.

Both lovingly agreed at once to draw  
A *Special Case*, and save the point in *Law*,  
That so the Battle, *neither lost nor won*,  
' Continued, ended, and again begun,  
Might still survive, and other suits succeed, }  
For future Heroes of the Gown to lead, }  
And future Bards in loftier verse to PLEAD. }

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<sup>1</sup> "Continued, ended, and again begun"—See the order of legal Proceedings in point of practice, in the first Part of these Lectures, *Lect. IV. page 41.*

FINIS.







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